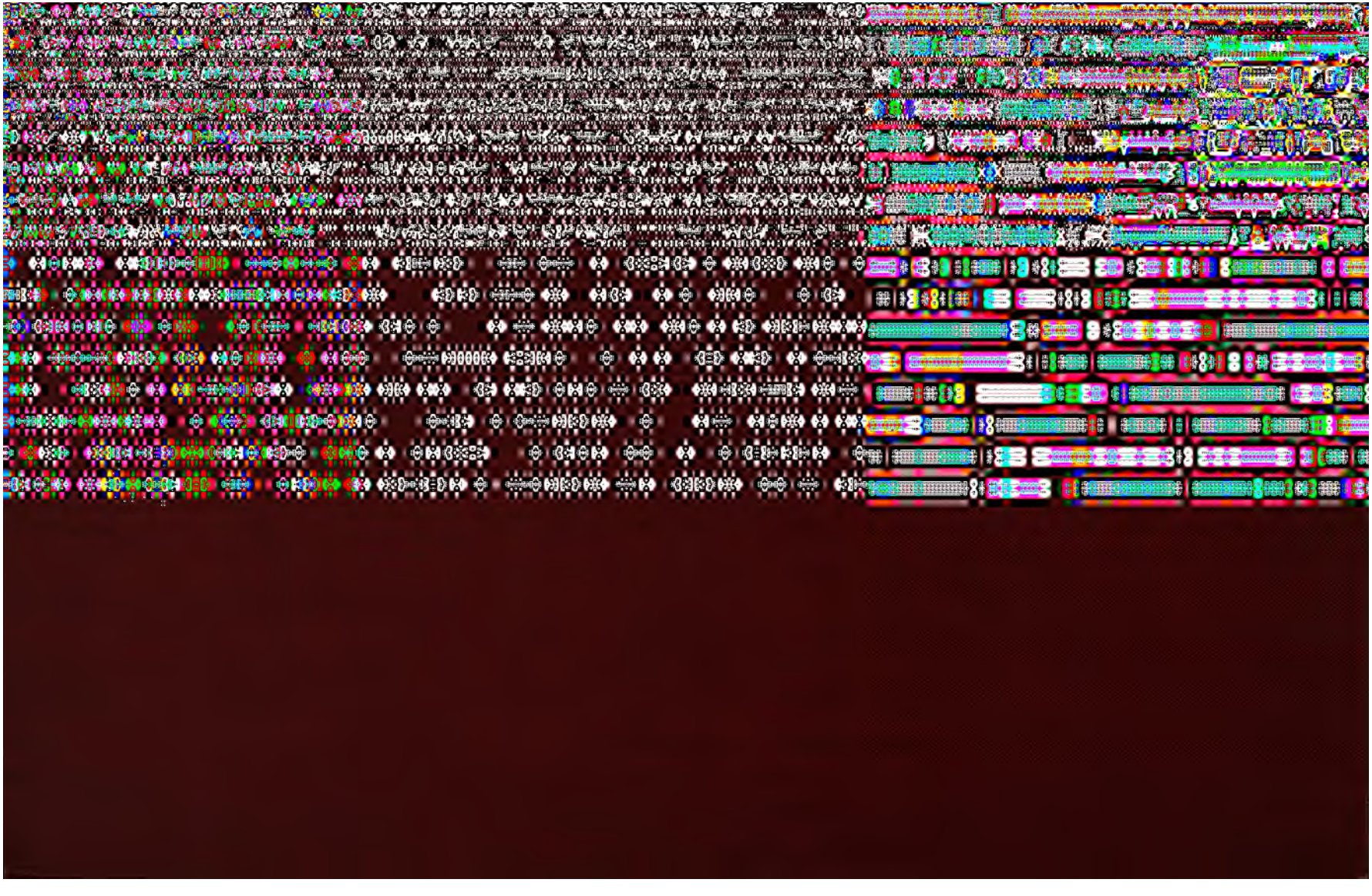

4

LANDS FOR EDUCATIONAL PURPOSES

HEARING

BEFORE THE

COMMITTEE ON THE PUBLIC LANDS

HOUSE OF REPRESENTATIVES

SIXTY-FOURTH CONGRESS

FIRST SESSION

ON

H. R. 8491

A BILL TO AMEND THE ACT ENTITLED "AN ACT TO AMEND SECTIONS 2275 AND 2276, REVISED STATUTES," AND TO AUTHORIZE AN EXCHANGE OF LANDS BETWEEN THE UNITED STATES AND THE SEVERAL STATES

FEBRUARY 15–20, MARCH 30–31, AND APRIL 1, 1916

WASHINGTON
GOVERNMENT PRINTING OFFICE
1916

LANDS FOR EDUCATIONAL PURPOSES.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Tuesday, February 15, 1916.

The committee this day met, Hon. Scott Ferris (chairman) presiding.

The CHAIRMAN. The committee has met this morning to hear some gentlemen in regard to H. R. 8491, entitled "A bill to amend the act entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated,' and to authorize an exchange of lands between the United States and the several States."

The bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated, and for other purposes," are hereby declared applicable to the grants of school lands made by the acts of February twenty-second, eighteen hundred and eighty-nine (Twenty-fifth Statutes at Large, page six hundred and seventy-six), July third, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and fifteen), and July tenth, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and twenty-two), and all selections heretofore made and approved under said grants and in accordance with said act of February twenty-eighth, eighteen hundred and ninety-one, if otherwise lawful, are hereby ratified and confirmed; that all pending and unapproved selections heretofore made under said grants and in accordance with said act, if found otherwise regular, and for lands subject to selection at date of approval may be approved under the provisions of said act.

SEC. 2. That said act of February twenty-eighth, eighteen hundred and ninety-one, is hereby amended by addition of the following section:

"That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests it shall be lawful for the State in pursuance of an agreement, either prior or subsequent hereto, between the State and the Secretary of Agriculture to relinquish its claim, right, and title thereto and select in lieu thereof other unappropriated nonmineral lands of approximately equal value designated by the Secretary of Agriculture and lying within the present boundaries of any national forest or forests within the State wherein the exchange is to be made; that upon the consummation of the exchange herein authorized and its approval by the Secretary of the Interior the President of the United States is authorized to eliminate from such national forest the lands so selected for and on behalf of the State: *Provided,* That the lands granted in place to such State or Territory and surrendered under the provisions hereof shall, upon the approval of the indemnity or exchange, revert to and become a portion of the national forest wherein located, subject to all the laws, rules, and regulations thereto applicable: *Provided further,* That the agreement between the State of South Dakota and the Bureau of Forestry, January fourth, nineteen hundred and ten, so far as heretofore consummated in accordance with the proclamation of the President, February fifteenth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page seventeen hundred and twenty-nine), is hereby ratified and confirmed."

SEC. 3. That exchanges of title between the United States and States heretofore made and approved under authority of said act of February twenty-eighth, eighteen hundred and ninety-one, whereby the State relinquished its title to surveyed school lands in forest or other permanent reservations in lieu of lands elsewhere are hereby ratified and confirmed, and all pending and unapproved exchanges of like character, if otherwise regular, for public lands subject to selection at date of approval may be in similar manner adjudicated and approved: *Provided*, That in future no such exchanges shall be made or approved except as provided in section two of this act, but nothing herein shall prevent the consummation of the agreement entered into between the Secretary of the Interior and the State of California with respect to sections, the property of the United States, sold or encumbered, by the State.

SEC. 4. That the provisions of sections one and two of this act shall be applicable only where the State shall have, by constitutional legislative enactment, signified its assent to the terms of said act of eighteen hundred and ninety-one, as herein declared and amended.

It has been suggested that the report of the Secretary of the Interior be printed herewith, regardless of its bulk. Without objection it will be inserted at this point.

DEPARTMENT OF THE INTERIOR,
Washington, December 18, 1915.

Hon. SCOTT FERRIS,
Chairman Committee on Public Lands, House of Representatives.

MY DEAR MR. FERRIS: As you are aware, it has been the general practice of Congress to grant to the various States two, and in some instances four, sections of public lands in place for the support of public schools. The act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the Revised Statutes, has in the past been regarded and treated by this department as a general adjustment act, permitting the States to select other vacant nonmineral public lands in lieu of losses to the grant in place; that with respect to the establishment of national forests and other reservations, including within their exterior limits unsurveyed school sections, the reservation operated to defeat the grant in place, but entitled the State to lands in lieu thereof; and that as to school lands surveyed prior to the establishment of such reservations the State might, under the so-called exchange provision of the act, surrender its title to such surveyed school sections in exchange for public lands of the United States. With respect to the school grant made to the States of Washington, Montana, South Dakota, and North Dakota by the act of February 22, 1889 (25 Stat., 676), the Supreme Court of Washington, in the case of the State *v.* Whitney, held, in substance, that the grant was a present one, applicable to all lands, whether surveyed or unsurveyed, and that the act of February 28, 1891, supra, did not operate to repeal or limit the operation of the grant to said States under the act of 1889. In the case of Hibberd *v.* Slack (84 Fed. Rep., 571), involving school sections in California surveyed prior to their inclusion in a reservation, the court held, in substance that the act of February 28, 1891, supra, does not authorize the State to surrender school lands in place surveyed prior to the creation of the reservation in exchange for other public lands, this upon the theory that the title to the lands in place had vested in the State, and that the latter was without authority to surrender such title for lieu lands. The said decision was followed in the case of the Desert Water, Oil & Irrigation Co. *v.* State of California (138 Pac. Rep., 981), now pending in the Supreme Court of the United States on writ of error. The situation is also complicated, particularly with respect to those States which were granted school lands in place by the act of February 22, 1889, supra, by provisions in the constitutions of the States and in the law providing that the lands granted shall be disposed of in a specific manner and at not less than a specified price. With respect to this provision, the Supreme Court of Idaho, in Balderston *v.* Brady (17 Idaho, 567), held that the State officials were not authorized to surrender sections in place and take indemnity therefor, but could dispose of school sections only in accordance with the constitutional provision indicated. Subsequently, after the enactment of a law by the State legislature authorizing exchanges, the supreme court, in Rogers *v.* Hawley (19 Idaho, 751), held that the same might be properly consummated.

The situation with respect to these grants is, therefore, that the former rulings and practices of this department have been questioned or controverted by decisions of the State courts, and in one instance by decision of a Federal court, with the result that the department has felt it incumbent upon it to suspend all pending applications for the exchange of lands in such cases and to refuse to entertain further applications therefor. This situation has resulted in delay and hardship to the States

and to purchasers of lieu lands from the various States and calls for action which will enable the United States and the States to adjust and settle these grants.

I have, therefore, caused to be prepared and herewith transmit a tentative form of measure which, in the view of the department, would meet the situation provided that appropriate action be had by the several States where necessary to secure on their part the necessary authority to meet the terms of the exchange authorized by Federal law.

Section 1 makes applicable to States, having grants of school lands under certain acts therein described, the provisions of the act of Congress approved February 28, 1891, confirms selections heretofore made and approved thereunder, and proposes to authorize the approval of all pending unapproved selections heretofore made, if otherwise regular, and made for lands subject to selection at date of approval.

Section 2 proposes a plan of adjustment of the school grants in so far as they fall within the exterior limits of national forests, the object being to adjust the grant in a way which will be mutually beneficial to the United States and the States. The plan proposed is designed (1) to enable the several States to consolidate their lands in a solid block, so that they may be handled on a profitable and businesslike basis, and to permit the States to come into immediate possession and use of the full acreage of school lands within national forests to which they might be eventually entitled. (2) It will remedy the embarrassing situation which now exists of having school lands granted in place, two or four sections, being scattered throughout national forests in such a way as to embarrass the Federal Government in the use and administration of national-forest lands, the State being at the same time not in a position to make beneficial use of the isolated and scattered areas. In substance, it permits the State and the United States, acting through the Departments of Agriculture and Interior, to mutually agree for the surrender of the scattered school sections within national forests and the selection in lieu thereof, within the boundaries of any national forest or forests within the State, of a solid block or blocks of land of approximately equal value, and the patenting thereof to the States. The second proviso to the section is designed to permit the consummation of an agreement made between the Department of Agriculture and the State of South Dakota of the character described, which agreement was entered into upon the belief that existing law permitted such an arrangement. It may be stated in this connection that the States of Idaho, Montana, and Washington have indicated a desire to make such exchanges as are proposed in section 2 of this measure, and examinations of lands have been made, or are now in progress, to that end, Congress having in the acts of March 4, 1913, and March 4, 1915, appropriated money to enable the Forestry Service of the Department of Agriculture to make examinations or investigations in the States of Montana and Washington. Undoubtedly, some of the other public-land States will in the future desire to enter into similar arrangements.

Section 3 of the bill is confirmatory and is designed to permit the approval and passing of title to the States of indemnity selections heretofore made in lieu of surveyed school lands in forests or other permanent reservations. It is particularly important to the States which have made such lieu selections and to those who have purchased the selected land from the States in anticipation of the consummation of the exchange. The reason for inserting in the proviso to section 3 the clause respecting an agreement between the Secretary of the Interior and the State of California is briefly as follows: School sections in place approximating in area 7,000 acres were believed to be within the limits of certain private land grants in the State of California, and on the basis thereof the State secured lieu lands. Subsequently, upon final survey of the private grants, it was found that the sections in place in fact lay outside of the grant limits, and the State, assuming that it owned the same, proceeded to dispose of the same to private individuals. In adjusting the school grant to the State of California this fact was disclosed and the State, in order to protect the purchasers of the land in place and to make reparation for the unauthorized sale of the sections in place, which in fact were not State lands, entered into an agreement with the Secretary of the Interior in 1912 to select the said sections in place, aggregating, as stated, about 7,000 acres in lieu of school sections within national forests. The entire matter of adjustments between the State and the United States has been ratified by the Legislature of the State of California, and should this measure become a law it is important that in order to entirely straighten out the matter the clause just described be included. The situation is limited to the area described, and is present nowhere else.

Section 4 provides that sections 1 and 2 of this measure shall be applicable only where the States shall have by constitutional legislative enactment assented to the terms and conditions of the act of February 28, 1891, supra, this provision being designed to secure the necessary constitutional action by those States where it may

be found they are at present without constitutional authority to consummate the exchanges authorized to be made under sections 1 and 2 of this bill.

The existing situation has been the subject of extended investigation by this department, and I inclose a report submitted by the General Land Office setting out in detail the history of the school grants and the operations thereunder. The legislation proposed is urgent and important, both from the viewpoint of the National Government and of the States interested, and I earnestly hope that some such legislation may be had in the near future. Should the tentative measure herewith submitted meet with your approval, I will be glad if you will introduce same.

Very truly, yours,

ANDRIEUS A. JONES,
First Assistant Secretary.

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE ON ADJUSTMENT OF GRANTS IN AID OF PUBLIC SCHOOLS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.

The SECRETARY OF THE INTERIOR.

SIR: In accordance with your request of December 3, 1914, I have the honor to submit herewith a report with respect to the pending adjustment of the several grants in aid of public schools, especially as to claims for indemnity.

The specific information called for in your request covers so wide a field of investigation that I have deemed it advisable to indicate the order in which the several features will be presented:

1. Call for report.
2. Character of the school grant, as defined by the courts.
3. General legislation regulating indemnity.
   Decisions of the courts and department thereon.
4. Grants to the several States:
   (*a*) State constitutional provisions.
   (*b*) State legislation.
   (*c*) Decisions of the State and Federal courts construing said grants—
      California.
      Oregon.
      Nevada.
      Colorado.
      Washington.
      Montana.
      North Dakota.
      South Dakota.
      Idaho.
      Wyoming.
      Utah.
      New Mexico.
      Arizona.
5. Proposed legislation:
   (*a*) Amendatory act of 1891.
   (*b*) Mineral lands.
6. Tabulated statement of present status of adjustment as to lands within national forests and other reservations.

NOTE.—For exception of mineral land from grants, see Nevada, Utah, and New Mexico.

1. CALL FOR REPORT.

DEPARTMENT OF THE INTERIOR,
December 3, 1914.

The COMMISSIONER OF THE GENERAL LAND OFFICE.

SIR: The question of adjusting the school grants to the several public-land States, and particularly the matter of indemnity selections for losses by reason of creation of national forests and other reservations, is, as you are aware, an exceedingly embarrassing and uncertain matter, particularly in view of the peculiar language of the grants to certain of the States, of the peculiar constitutional provisions or lack of constitutional provisions in certain of the States governing exchanges, and of the fact

that numerous forest and other reservations have been created since the admission of the several States into the Union.

Various bills have been introduced into Congress and tentative drafts of reports thereupon submitted for the department's consideration, but none seem to cover the field, nor to afford an entirely satisfactory solution of all problems. It occurs to me that we should first ascertain, as nearly as possible, the exact legal and constitutional difficulties which confront us in this particular, the status of the grants to the several States, particularly with reference to existing reservations or withdrawals, and then draft a tentative measure meeting and curing these difficulties and deficiencies.

In connection with House joint resolution 266 you transmitted a tentative draft of report, which report discusses generally the laws and decisions, and gives approximately the acreage of approved and unapproved school indemnity selections made upon the basis of surveyed and unsurveyed school sections within national forests and national parks. There is no statement, however, of the approximate total of school sections within the limits of national forests, national parks, Indian or other reservations in each of the several States, or information as to when the several reservations or withdrawals were made. Neither is there a specific statement as to the exact difficulties, constitutional or legal, in the way of effecting an adjustment in each State.

It occurs to me, therefore, as a basis for further intelligent consideration of the matter, it will be necessary for you to compile from your records a memorandum of statement, which shall first take up, State by State, the exact legal situation under both Federal and State laws, with respect to school sections and indemnity for losses thereof. In each case a statement should be made of the decisions of the courts of that State or of other States which bear upon the right or absence of right of the State or of the Federal Government to consummate exchanges. The difference in the terms of the several enabling acts and of the constitutions of the States renders it important that the peculiar conditions and difficulties applicable to each State be given separately. I would also like a statement of the approximate total acreage of granted school sections within the limits of national forests, national parks, national monuments, Executive order Indian reservations, etc., in addition to the more specific data given in the proposed report on House joint resolution 266. This data, together with the data already collated by you, showing the approved and pending indemnity selections, should enable us to ascertain the amount of land which might be sought to be made the subject of future exchange. I would also like to be advised, approximately, of the acreage of indemnity school selections offered and pending and which selected land is now included within withdrawals or reservations for water-power sites and other withdrawals made under the provisions of the act of June 25, 1910 (36 Stat., 847); also approximate acreage of indemnity school selections pending for lands which have, since date of proffer of the selection, been included within existing national forests, parks, monuments, or Executive order Indian reservations.

The matters involved are so important to the Government, the several States, and incidentally to individuals, and the necessity for comprehensive and decisive legislation curing difficulties and doubts so evident, that I believe the labor involved in securing the data above indicated, and any other data which you may regard material, is fully warranted. This memorandum or tabulation need not be prepared for the States whose grants have been practically adjusted and within whose limits no national forests or parks exist, but should include those public-land States with unadjusted grants, within whose limits exist national parks, national forests, Executive order Indian reservations, and national monuments.

Please refer in your reply to Miscellaneous Docket No. 29583.

Respectfully,

A. A. JONES,
First Assistant Secretary.

2. CHARACTER OF SCHOOL GRANT, AS DEFINED BY THE DECISIONS OF THE COURT.

Heydenfeldt *v.* Daney Gold & Silver Mining Co. (93 U. S., 637):

"The validity of the patent from the State under which the plaintiff claims title rests on the assumption that sections 16 and 36, whether surveyed or unsurveyed, and whether containing minerals or not, were granted to Nevada for the support of common schools by the seventh section of the enabling act approved March 21, 1864 (13 Stat., 32), which is as follows: 'That sections numbered 16 and 36 in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one

quarter section, and as contiguous as may be, shall be and are hereby, granted to said State for the support of common schools.'

"This assumption is not admitted by the United States, who, in conformity with the act of Congress of July 26, 1866 (14 id., 251), issued to the defendant a patent to the land in controversy, bearing date March 2, 1874. Which is the better title is the point for decision. As it has been the settled policy of the Government to promote the development of the mining resources of the country, and as mining is the chief industry in Nevada, the question is of great interest to her people.

* * * * * * *

"Congress, at the time, was desirous that the people of the Territory of Nevada should form a State Government and come into the Union. The terms of admission were proposed, and, as was customary in previous enabling acts, the particular sections of the public lands to be donated to the new State for the use of common schools were specified. These sections had not been surveyed, nor had Congress then made, or authorized to be made, any disposition of the national domain within that Territory.

"But this condition of things did not deter Congress from making the necessary provision to place, in this respect, Nevada on an equal footing with States then recently admitted. Her people were not interested in getting the identical sections 16 and 36 in every township. Indeed, it could not be known until after a survey where they would fall, and a grant of quantity put her in as good a condition as the other States which had received the benefit of this bounty. A grant operating at once and attaching prior to the surveys by the United States would deprive Congress of the power of disposing of any part of the lands in Nevada until they were segregated from those granted. In the meantime, further improvements would be arrested, and the persons who prior to the surveys had occupied and improved the country would lose their possessions and labor in case it turned out that they had settled upon the specified sections. Congress was fully advised of the condition of Nevada, of the evils which such a measure would entail upon her, and of all antecedent legislation upon the subject of the public lands within her bounds. In the light of this information, and surrounded by these circumstances, Congress made the grant in question. It is ambiguous; for its different parts can not be reconciled if the words used to receive their usual meaning. Schulenberg *v.* Harriman (21 Wall., 44), establishes the rule that 'unless there are other clauses in a statute restraining the operation of words of present grant, these must be taken in their natural sense.' We do not seek to depart from this sound rule; but, in this instance, words of qualification restrict the operation of those of present grant. Literally construed, they refer to past transactions; but evidently they were not employed in this sense, for no lands in Nevada had been sold or disposed of by any act of Congress. There was no occasion of making provision for substituted lands if the grant took effect absolutely on the admission of the State into the Union, and the title to the lands then vested in the State. Congress can not be supposed to have intended a vain thing, and yet it is quite certain that the language of the qualification was intended to protect the State against a loss that might happen through the action of Congress in selling or disposing of the public domain. It could not, as we have seen, apply to past sales or dispositions, and, to have any effect at all, must be held to apply to the future.

"This interpretation, although seemingly contrary to the letter of the statute, is really within its reason and spirit. It accords with a wise public policy, gives to Nevada all she could reasonably ask, and acquits Congress of passing a law which in its effects would be unjust to the people of the Territory. Besides, no other construction is consistent with the statute as a whole, and answers the evident intention of its makers to grant to the State in praesenti a quantity of lands equal in amount to the sixteenth and thirty-sixth sections in each township. Until the status of the lands was fixed by a survey, and they were capable of identification, Congress reserved absolute power over them; and if in exercising it the whole or any part of a sixteenth or thirty-sixth section had been disposed of, the State was to be compensated by other lands equal in quantity, and as near as may be in quality."

Water & Mining Co. *v.* Bugbey (96 U. S., 167):

"In Sherman *v.* Buick (93 U. S., 209) it was decided that the State of California took no title to sections 16 and 36, under the act of 1853, as against an actual settler before the survey, claiming the benefit of the preemption laws, who perfected his claim by a patent from the United States. In such a case the State must look for its indemnity to the provisions of section 7 of the act. As against all the world, except the preemption settler, the title of the United States passed to the State upon the completion of the surveys; and if the settler failed to assert his claim, or to make it good, the rights of the State became absolute. The language of the court is (p. 214):

"These things (settlement and improvement under the law) being found to exist when the survey ascertained their location on a school section, the claim of the State to that particular piece of land was at an end; and it being shown in the proper mode to the proper officer of the United States, the right of the State to the land was gone, and in lieu of it she had acquired the right to select other land, agreeably to the act of 1826.'

"In that case, the controversy was between the settler, who had perfected his title from the United States, and a purchaser from the State. Here the company does not claim under the settler's title, but seeks by means of it to defeat that of the State, an thus leave the land in a condition to be operated upon by the act of July 26. T settler, however, was under no obligation to assert his claim, and he having abandoned it, the title of the State became absolute as of May 19, 1866, when the surveys were completed. The case stands, therefore, as if at that date the United States had parted with all interest in and control over the property."

Minnesota *v.* Hitchcock (185 U. S., 392):

"Again, the language of the section does not imply a grant in praesenti. It is 'shall be granted.' Doubtless under that promise whenever lands became public lands they came within the scope of the grant. As said in Beecher *v.* Wetherby (95 U. S., 517, 523), with reference to a similar clause in the act for the admission of Wisconsin into the Union:

"'It was, therefore, an unalterable condition of the admission, obligatory upon the United States, that section 16 in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title to the State upon her acceptance of the propositions as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially excepted.'"

State of Alabama *v.* Schmidt (232 U. S., 168):

"The gift to the State is absolute, although, no doubt, as said in Cooper *v.* Roberts (18 How., 173), 'There is a sacred obligation imposed on its public faith.' But that obligation is honorary, like the one discussed in Conley *v.* Ballinger (216 U. S., 84), and even in honor would not be broken by a sale and substitution of the fund, as in that case; a course, we believe, that has not been uncommon among the States. See, further, Stuart *v.* Easton (170 U. S., 383)."

The grant, then, in aid of the public schools, as defined by the decisions of the courts, whether the words of grant are "hereby granted," "shall be, and is hereby granted," or "shall be granted," is a present grant, taking effect as to particular tracts of land when identified by survey.

3. GENERAL LEGISLATION.

By the act of May 20, 1826 (4 Stat., 179), Congress appropriated lands for the support of schools, in certain townships, and fractional townships, not before provided for, and fixed a rule for determining the amount of the grant in the case of fractional townships. Section 2 of the act provided:

"That the aforesaid tracts of land shall be selected by the Secretary of the Treasury out of any unappropriated public land within the land district where the township for which any tract is selected may be situated."

This is not an indemnity set, but provides for selections in cases where school lands had not theretofore been appropriated.

The act of February 26, 1859 (11 Stat., 385) grants indemnity for school lands lost by reason of settlements prior to survey, also for deficiencies by reason of the fractional character of the granted sections, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. It is further provided that the selections and appropriations thus authorized should be taken in accordance with the principles of adjustment found in the act of May 20, 1826 (4 Stat., 179).

Sections 2275 and 2276, Revised Statutes, preserve the principal features of the foregoing acts, making due provision for indemnity and adjustment in accordance therewith.

Section 2275, Revised Statutes, was amended by act of February 28, 1891 (26 Stat., 796), to read as follows:

"Where settlements, with a view to preemption or homestead, have been or shall hereafter be made before the survey of the lands in the field, which are found to have

been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory, to compensate deficiencies for school purposes where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however*, That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing."

Section 2276, Revised Statutes, was also amended by said act to read as follows:

"That the lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur; and where the selections are to compensate for deficiencies of school lands in fractional townships such selections shall be made in accordance with the following principles of adjustment, to wit: For each township or fractional township containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township containing a greater quantity of land than one-half, and not more than three-quarters of a township, three-quarters of a section; for a fractional township containing a greater quantity of land than one-quarter, and not more than one-half of a township, one-half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one quarter section of land: *Provided*, That the States or Territories which are, or shall be, entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named to compensate for deficiencies of school land in fractional townships."

The provisions of the act of February 28, 1891, have been specifically extended to Utah, New Mexico, and Arizona. See acts of May 3, 1902 (32 Stat., 188), March 16, 1908 (35 Stat., 44), and June 20, 1910 (36 Stat., 557).

Departmental Decisions.

As to the foregoing legislation, the Land Department has held that the acts of May 20, 1826, and of February 26, 1859, are of general applicability to all the States in the adjustment of the school grant. (5 L. D., 545; 13 L. D., 378.)

These statutes, as heretofore noted, form the basis for sections 2275 and 2276, as appearing in the Revised Statutes, and constituted the general law of adjustment of the school grant until the amendatory act of February 28, 1891, since which time the department has held in numerous cases that said sections, as amended, are applicable to all the public land States and operate as a repeal of all special laws theretofore enacted, so far as in conflict therewith (12 L. D., 400; 24 L. D., 12,106; 21 L. D., 220; 23 L. D., 423); or, as stated in a later decision, the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, is a general act establishing a uniform rule with respect to the adjustment of school land grants to the several States, affording each an equal right of indemnity, superseding, so far as is in conflict, all other laws bearing on the same subject. (36 L. D., 89.)

COURT DECISIONS.

The scope of the act of February 28, 1891 (26 Stat., 796), was under consideration in the case of Johnston *v.* Morris, decided February 3, 1896, in the Circuit Court of Appeals, Ninth Circuit (72 Fed. Rep., 890), wherein the court said:

"The contention that the act of February 28, 1891 (26 Stat., 796), amending section 2275 of the Revised Statutes, does not apply to California, is supported by a decision of the Secretary of the Interior, dated July 6, 1892 (State of California, 15 Land Dec. Dep. Int., 10). The Secretary had before him an appeal, taken by the State of California, from a decision of the General Land Office rejecting certain applications by the State to select indemnity school lands upon the basis of townships made fractional by reason of portions thereof being swamp lands. It was contended on the part of the State, among other things, that as the swamp lands situated within the State had been granted to the State by the act of September 28, 1850, those lands had been 'otherwise disposed of by the United States,' and that the State was therefore entitled to indemnity selection for sections 16 and 36 of such lands lost from the school grant by reason of being swamp lands. This contention was based upon the following provision of section 2275 of the Revised Statutes, as amended by the act of February 28, 1891:

"'And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States.'

"The Secretary held that California took her school grant under section 6 of the act of March 3, 1853, and section 6 of the act of July 23, 1866; and that the indemnity provision of section 2275 of the Revised Statutes, as amended, was not applicable to selections made by the State in lieu of the swamp land lost from the school land grant, on the ground that it would be giving to the State an indemnity for a class of lands already donated to the State; and that the principle upon which indemnity is given to the State is for a loss, and not for that which the State has already received. This is a clear and forcible statement of the reason why the State is not entitled to make indemnity selections for school lands which it had already received as swamp lands, but this reason does not apply to losses from the school grant by reason of sections 16 and 36 being mineral lands. Where such sections are found to be mineral lands, there is an absolute loss of such lands to the State, and, to that extent, a clear and unconditional diminution of the school land grant. The policy of Congress has been, clearly, in the direction of an enlargement of the grant to the State, rather than a diminution. When, therefore, the Secretary went beyond the question he had before him, relating to swamp lands, and determined that section 2275, as amended by the act of February 28, 1891, did not give any additional indemnity rights to the States, and that such provisions merely declared the existing laws, he certainly gave to the amendment a limitation not warranted by the legitimate conclusion to be drawn from his own argument; and it appears to be too narrow an interpretation to hold that the amendment only provided an additional right in the adjustment of the grant to make indemnity selections in advance of the surveys, and from any unappropriated public lands in the State or Territory where the loss occurs, instead of from lands most contiguous to the same. A more satisfactory interpretation of the statute as amended is to be found in a prior decision of the Secretary of the Interior, dated April 22, 1891, where it was held that it was intended by the act of February 28, 1891, to provide a uniform rule for the selection of indemnity of lands applicable to all the States and Territories having grants of school lands. This decision is based, mainly, upon the proceedings in Congress, and, particularly, on the report of the Committee on Public Lands of the House of Representatives, reciting and adopting a report previously made to the Senate. This report contained the following statement:

" 'In the administration of the law, it has been found by the Land Department that the statute does not meet a variety of conditions, whereby the States and Territories suffer loss of these sections, without adequate provision for indemnity selection in lieu thereof. Special laws have been enacted in a few instances to cover, in part, these defects with respect to particular States or Territories; but, as the school grant is intended to have equal operation and equal benefit in all the public-land States and Territories, it is obvious the general law should meet the situation, and partiality or favor be thereby excluded. * * * The bill as now framed will cure all inequalities in legislation, place the States and Territories in a position where the school grant can be applied to good lands, and largest measure of benefit to the school funds be thereby secured.' (22 Cong. Rec., p. 3632.)

"In construing a statute, aid may be derived from attention to the state of things as it appeared to the legislature when the statute was enacted. (U. S. *v.* Union Pac.

LANDS FOR EDUCATIONAL PURPOSES.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Tuesday, February 15, 1916.

The committee this day met, Hon. Scott Ferris (chairman) presiding.

The CHAIRMAN. The committee has met this morning to hear some gentlemen in regard to H. R. 8491, entitled "A bill to amend the act entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated,' and to authorize an exchange of lands between the United States and the several States."

The bill reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated, and for other purposes," are hereby declared applicable to the grants of school lands made by the acts of February twenty-second, eighteen hundred and eighty-nine (Twenty-fifth Statutes at Large, page six hundred and seventy-six), July third, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and fifteen), and July tenth, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and twenty-two), and all selections heretofore made and approved under said grants and in accordance with said act of February twenty-eighth, eighteen hundred and ninety-one, if otherwise lawful, are hereby ratified and confirmed; that all pending and unapproved selections heretofore made under said grants and in accordance with said act, if found otherwise regular, and for lands subject to selection at date of approval may be approved under the provisions of said act.

SEC. 2. That said act of February twenty-eighth, eighteen hundred and ninety-one, is hereby amended by addition of the following section:

"That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests it shall be lawful for the State in pursuance of an agreement, either prior or subsequent hereto, between the State and the Secretary of Agriculture to relinquish its claim, right, and title thereto and select in lieu thereof other unappropriated nonmineral lands of approximately equal value designated by the Secretary of Agriculture and lying within the present boundaries of any national forest or forests within the State wherein the exchange is to be made; that upon the consummation of the exchange herein authorized and its approval by the Secretary of the Interior the President of the United States is authorized to eliminate from such national forest the lands so selected for and on behalf of the State: *Provided*, That the lands granted in place to such State or Territory and surrendered under the provisions hereof shall, upon the approval of the indemnity or exchange, revert to and become a portion of the national forest wherein located, subject to all the laws, rules, and regulations thereto applicable: *Provided further*, That the agreement between the State of South Dakota and the Bureau of Forestry, January fourth, nineteen hundred and ten, so far as heretofore consummated in accordance with the proclamation of the President, February fifteenth, nineteen hundred and twelve (Thirty-seventh Statutes at Large, page seventeen hundred and twenty-nine), is hereby ratified and confirmed."

SEC. 3. That exchanges of title between the United States and States heretofore made and approved under authority of said act of February twenty-eighth, eighteen hundred and ninety-one, whereby the State relinquished its title to surveyed school lands in forest or other permanent reservations in lieu of lands elsewhere are hereby ratified and confirmed, and all pending and unapproved exchanges of like character, if otherwise regular, for public lands subject to selection at date of approval may be in similar manner adjudicated and approved: *Provided*, That in future no such exchanges shall be made or approved except as provided in section two of this act, but nothing herein shall prevent the consummation of the agreement entered into between the Secretary of the Interior and the State of California with respect to sections, the property of the United States, sold or encumbered, by the State.

SEC. 4. That the provisions of sections one and two of this act shall be applicable only where the State shall have, by constitutional legislative enactment, signified its assent to the terms of said act of eighteen hundred and ninety-one, as herein declared and amended.

It has been suggested that the report of the Secretary of the Interior be printed herewith, regardless of its bulk. Without objection it will be inserted at this point.

DEPARTMENT OF THE INTERIOR,
Washington, December 15, 1915.

Hon. SCOTT FERRIS,
Chairman Committee on Public Lands, House of Representatives.

MY DEAR MR. FERRIS: As you are aware, it has been the general practice of Congress to grant to the various States two, and in some instances four, sections of public lands in place for the support of public schools. The act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the Revised Statutes, has in the past been regarded and treated by this department as a general adjustment act, permitting the States to select other vacant nonmineral public lands in lieu of losses to the grant in place; that with respect to the establishment of national forests and other reservations, including within their exterior limits unsurveyed school sections, the reservation operated to defeat the grant in place, but entitled the State to lands in lieu thereof; and that as to school lands surveyed prior to the establishment of such reservations the State might, under the so-called exchange provision of the act, surrender its title to such surveyed school sections in exchange for public lands of the United States. With respect to the school grant made to the States of Washington, Montana, South Dakota, and North Dakota by the act of February 22, 1889 (25 Stat., 676), the Supreme Court of Washington, in the case of the State *v.* Whitney, held, in substance, that the grant was a present one, applicable to all lands, whether surveyed or unsurveyed, and that the act of February 28, 1891, supra, did not operate to repeal or limit the operation of the grant to said States under the act of 1889. In the case of Hibberd *v.* Slack (84 Fed. Rep., 571), involving school sections in California surveyed prior to their inclusion in a reservation, the court held, in substance that the act of February 28, 1891, supra, does not authorize the State to surrender school lands in place surveyed prior to the creation of the reservation in exchange for other public lands, this upon the theory that the title to the lands in place had vested in the State, and that the latter was without authority to surrender such title for lieu lands. The said decision was followed in the case of the Desert Water, Oil & Irrigation Co. *v.* State of California (138 Pac. Rep., 981), now pending in the Supreme Court of the United States on writ of error. The situation is also complicated, particularly with respect to those States which were granted school lands in place by the act of February 22, 1889, supra, by provisions in the constitutions of the States and in the law providing that the lands granted shall be disposed of in a specific manner and at not less than a specified price. With respect to this provision, the Supreme Court of Idaho, in Balderston *v.* Brady (17 Idaho, 567), held that the State officials were not authorized to surrender sections in place and take indemnity therefor, but could dispose of school sections only in accordance with the constitutional provision indicated. Subsequently, after the enactment of a law by the State legislature authorizing exchanges, the supreme court, in Rogers *v.* Hawley (19 Idaho, 751), held that the same might be properly consummated.

The situation with respect to these grants is, therefore, that the former rulings and practices of this department have been questioned or controverted by decisions of the State courts, and in one instance by decision of a Federal court, with the result that the department has felt it incumbent upon it to suspend all pending applications for the exchange of lands in such cases and to refuse to entertain further applications therefor. This situation has resulted in delay and hardship to the States

and to purchasers of lieu lands from the various States and calls for action which will enable the United States and the States to adjust and settle these grants.

I have, therefore, caused to be prepared and herewith transmit a tentative form of measure which, in the view of the department, would meet the situation provided that appropriate action be had by the several States where necessary to secure on their part the necessary authority to meet the terms of the exchange authorized by Federal law.

Section 1 makes applicable to States, having grants of school lands under certain acts therein described, the provisions of the act of Congress approved February 28, 1891, confirms selections heretofore made and approved thereunder, and proposes to authorize the approval of all pending unapproved selections heretofore made, if otherwise regular, and made for lands subject to selection at date of approval.

Section 2 proposes a plan of adjustment of the school grants in so far as they fall within the exterior limits of national forests, the object being to adjust the grant in a way which will be mutually beneficial to the United States and the States. The plan proposed is designed (1) to enable the several States to consolidate their lands in a solid block, so that they may be handled on a profitable and businesslike basis, and to permit the States to come into immediate possession and use of the full acreage of school lands within national forests to which they might be eventually entitled. (2) It will remedy the embarrassing situation which now exists of having school lands granted in place, two or four sections, being scattered throughout national forests in such a way as to embarrass the Federal Government in the use and administration of national-forest lands, the State being at the same time not in a position to make beneficial use of the isolated and scattered areas. In substance, it permits the State and the United States, acting through the Departments of Agriculture and Interior, to mutually agree for the surrender of the scattered school sections within national forests and the selection in lieu thereof, within the boundaries of any national forest or forests within the State, of a solid block or blocks of land of approximately equal value, and the patenting thereof to the States. The second proviso to the section is designed to permit the consummation of an agreement made between the Department of Agriculture and the State of South Dakota of the character described, which agreement was entered into upon the belief that existing law permitted such an arrangement. It may be stated in this connection that the States of Idaho, Montana, and Washington have indicated a desire to make such exchanges as are proposed in section 2 of this measure, and examinations of lands have been made, or are now in progress, to that end, Congress having in the acts of March 4, 1913, and March 4, 1915, appropriated money to enable the Forestry Service of the Department of Agriculture to make examinations or investigations in the States of Montana and Washington. Undoubtedly, some of the other public-land States will in the future desire to enter into similar arrangements.

Section 3 of the bill is confirmatory and is designed to permit the approval and passing of title to the States of indemnity selections heretofore made in lieu of surveyed school lands in forests or other permanent reservations. It is particularly important to the States which have made such lieu selections and to those who have purchased the selected land from the States in anticipation of the consummation of the exchange. The reason for inserting in the proviso to section 3 the clause respecting an agreement between the Secretary of the Interior and the State of California is briefly as follows: School sections in place approximating in area 7,000 acres were believed to be within the limits of certain private land grants in the State of California, and on the basis thereof the State secured lieu lands. Subsequently, upon final survey of the private grants, it was found that the sections in place in fact lay outside of the grant limits, and the State, assuming that it owned the same, proceeded to dispose of the same to private individuals. In adjusting the school grant to the State of California this fact was disclosed and the State, in order to protect the purchasers of the land in place and to make reparation for the unauthorized sale of the sections in place, which in fact were not State lands, entered into an agreement with the Secretary of the Interior in 1912 to select the said sections in place, aggregating, as stated, about 7,000 acres in lieu of school sections within national forests. The entire matter of adjustments between the State and the United States has been ratified by the Legislature of the State of California, and should this measure become a law it is important that in order to entirely straighten out the matter the clause just described be included. The situation is limited to the area described, and is present nowhere else.

Section 4 provides that sections 1 and 2 of this measure shall be applicable only where the States shall have by constitutional legislative enactment assented to the terms and conditions of the act of February 28, 1891, supra, this provision being designed to secure the necessary constitutional action by those States where it may

THE STATE OF OREGON.

By act of Congress approved February 14, 1859 (11 Stat., 383), the State was admitted to the Union.

By section 4 of the act of admission, several propositions were submitted to the people of the State for their consideration as follows:

"The following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit: First, that sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools."

The State of Oregon, by its legislature, June 3, 1859 (Lord's Oregon Laws, p. 29), accepted the above proposition with the others thus submitted.

STATE CONSTITUTION.

The constitution of Oregon was adopted prior to the act of admission, hence no reference is found therein to the disposition of the specific sections subsequently granted to the State.

STATE LEGISLATION.

Section 3881, Lord's Oregon Laws:

"CLASSIFICATION OF STATE LANDS.—For the purpose of this act the State lands shall be classified as follows: (a) School lands: Sections sixteen and thirty-six in each township granted to the State by act of Congress approved February fourteenth, eighteen hundred and fifty-nine; all lands selected for internal improvements under the act of Congress of September fourth, eighteen hundred and forty-one, and all lands selected for capital building purposes under the act of Congress approved February fourteenth, eighteen hundred and fifty-nine. (b) Indemnity lands: Lands selected to satisfy losses in sections sixteen and thirty-six, as provided by the laws of the United States. * * *"

Section 3895:

"BOARD TO FIX PRICE OF CERTAIN LANDS—MINIMUM.—The State land board may fix the price at which school, university, college, and swamp lands may be sold: *Provided, however*, That no such lands shall be sold for less than $2.50 per acre."

Section 3897:

"INDEMNITY LANDS—MINIMUM.—The price of indemnity land shall be fixed from time to time by the State land board: *Provided, however*, That no such lands shall be sold for less than $5 per acre."

Section 3930:

"STATE LAND BOARD MAY PURCHASE LANDS IN SCHOOL SECTIONS IN FOREST RESERVES.—The State land board is hereby authorized, in its discretion, to purchase lands in school sections within national forest reserves in Oregon, and to pay therefor an amount or amounts not exceeding the total in principal and interest actually paid to the State for the particular tract or tracts in question."

Section 3931:

"MINIMUM PRICE WHEN USED AS BASE.—In case lands acquired under the provisions of section thirty-nine hundred and thirty are used as bases for indemnity selections, the lands selected shall not be sold at less than the minimum price per acre, as provided in section thirty-eight hundred and ninety-seven."

Section 3932:

"BOARD MAY PERMIT PURCHASE OF INDEMNITY LAND.—The State land board shall have authority, in its discretion, to permit a person or corporation reconveying land to the State under this act to purchase all or any part of the land selected on said reconveyed land as base: *Provided*, That application for the land to be selected is presented at the time reconveyance of the land to be used as base is offered to the State."

These sections, 3930, 3931, and 3932, were repealed by act of the legislature adopted February 11, 1911 (General Session Laws, p. 65).

COURT DECISIONS.

United States *v.* Cowlishaw et al. (202 Fed. Rep., 317), arose under the Oregon school grant.

"The language of the act is 'shall be granted.' This has never been construed, that I am aware of, as a grant in præsenti, but it rather looks to the future, as depend-

ing on some future act or event, and as not to become effective until such act or event has taken place or happened. It is manifest that the act is not a grant of all sections 16 and 36 within the territorial limits of the State; for it provides that if such sections, or any part thereof, have been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted. This again raises the inquiry as to when the grant is to become effective as an actual transfer of the lands to the State. As to the lands to be granted in the place of the school sections, or any part thereof, sold or otherwise disposed of, it is very plain that there could be no passing of title until they were identified by some approved method of selection from the public domain. * * *

"It would seem to be a logical deduction from these authorities, therefore, that the grant of the school sections does not vest the title thereof in the State until they have become identified through a survey determining their location. In further support of this view, see also Hibbard *v.* Slack (C. C.), (84 Fed., 571), and State of Oregon (L. D.), decided July 5, 1912.

"As to the case of Beecher *v.* Wetherby (95 U. S., 517; 24 L. Ed., 440), there may be found expressions in the opinion seemingly opposed to this view; but the case itself does not seem to have been so considered by the Supreme Court in the Hitchcock case, although commented upon at some length. Furthermore, the case was decided subsequent to the Heydenfeldt case, with but a year intervening, and, although cited in the briefs of counsel, it was not referred to in the opinion of the court, so that we can not infer that it was the intention to overrule that case."

The school grant of Oregon was also under consideration in the case of Cobban *v.* Hyde (212 Fed. Rep., 480), as follows:

'The theory of the defense, which is quite urgently presented, is, in substance, that the terms of the Oregon enabling act operated as a grant in præsenti, and, upon the acceptance by the State of its provisions, the State became clothed with an indefeasible right to all the public lands within its borders which should thereafter be ascertained by actual survey to be embraced within the sixteenth and thirty-sixth sections; that, although title to the particular sections did not formally vest until the survey thereof was approved, the State was potentially clothed with the title for the reason that by the force of its terms the sixteenth and thirty-sixth sections were irrevocably appropriated to the use of the State, subject only to be thereafter identified by survey, and were thereby withdrawn from other sale or disposition by the United States; that it was thereafter not within the power of the Congress, or the President acting under subsequent legislation, to reserve or appropriate such lands or any part thereof to any other use; that the State had a perfect right to sell such lands in anticipation of the survey, and, upon such survey being made and approved, it inured to the benefit of the State and its grantees and operated to vest absolute title in fee thereto.

"From this promise it is argued that notwithstanding the decision of the Land Department to the contrary a perfect title to the lands involved had vested in Baldwin at the time of the sale by defendant to plaintiff and the giving of the guaranty above set out; that the latter paper is therefore not to be construed as guaranteeing in Baldwin a valid title, which he already had, but as warranting only the regularity of the various steps therein recited as vesting such title; that, so construed, the guaranty affords no consideration for the notes sued on, but they must be held to have been given under a misapprehension by defendant of his legal obligation thereunder. From this statement it will be observed that the essential question upon which the defense rests is whether the language of the enabling act is susceptible of the construction which the defendant thus seeks to place upon it.

"In reaching his conclusion that title to the lands involved never vested in the State of Oregon, the Secretary of the Interior said in his opinion:

" 'It is a well-established principle that the title of the State to the granted sections does not vest until they have been designated by an approved survey, and that until the survey of the lands and the vesting of title Congress has absolute power and control over the granted sections and may dispose of them in any manner that it may deem proper, leaving the State to its right to indemnity therefor. That has been so frequently determined by the Supreme Court as to be no longer a subject of controversy. (Heydenfeldt *v.* Daney Gold Mining Co., 93 U. S., 634; 23 L. Ed., 995.) Furthermore, the question was directly decided in Minnesota *v.* Hitchcock (185 U. S., 373–400; 22 Sup. Ct., 650; 46 L. Ed., 954); totidem verbis the same as the grant to the State of Oregon. In that case the court said that "the act of admission, with its clause in respect to school lands, was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections

were or should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was recognized, and provision made for the selection of other lands in lieu thereof." (See also Wisconsin *v.* Hitchcock, 201 U. S., 202; 26 Sup. Ct., 498; 50 L. Ed., 727.)' "

"These views of the honorable Secretary would seem to be fully sustained by the authorities referred to by him."

The case of Morrison et al *v.* United States, in the Circuit Court of Appeals, Ninth Circuit, February 2, 1914 (212 Fed. Rep., 29), involved a consideration of the school grant to the State of Oregon where, after reciting the history of the reservation for the Territory and the subsequent grant to the State on its admission, the court said:

"The proposition so submitted to the people of Oregon having been accepted by them, it can not be doubted, we think, that the legislation of Congress amounted to a congressional grant to that State of all the sixteenth and thirty-sixth sections for school purposes, to which no right of any third party attached prior to the proper identification of such sections.

"Such identification of the lands here in controversy was first made by the survey in the field June 2, 1902, which survey, it appears, was approved on the same day by the United States surveyor general for the State of Oregon, and by him transmitted to the General Land Office on the 8th of the same month, where it remained unaltered until its express approval by that office on the 31st day of January, 1906, and where in the meantime it met with recognition and was acted upon to identify the lands in question by the Commissioner of the General Land Office on the 12th and 19th days of December, 1905, and by the Secretary of the Interior on the 16th day of December, 1905, in making his order of withdrawal relied upon by the Government in the present case. The fact that there was a delay of about three and one-half years in the express approval of the survey by the Commissioner of the General Land Office is, in our opinion, wholly unimportant, and by no means unusual. The approval, when made, under the familiar doctrine of relation adopted by the courts for purposes of justice, related back to the inception of the proceeding, thereby perfecting the grant which was promised by the Government when Oregon was a Territory, and confirmed when it, as a State, accepted the propositions offered by Congress in its enabling act of 1859. It was, as said by the Supreme Court in a similar case—

"'An unalterable condition of the admission, obligatory upon the United States, that section 16 in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially accepted. All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; or, if any further assurance of title was required, to provide for the execution of proper instruments to transfer the naked fee, or to adopt such further legislation as would accomplish that result. They could not be diverted from their appropriation to the State.' (Beecher *v.* Wetherby, 95 U. S., 517; 24 L. Ed., 440.)"

The State of Nevada.

Admitted by proclamation October 31, 1864 (13 Stat., 749).

By the Territorial organic act of March 2, 1861 (12 Stat., 209, sec. 14), provision was made:

"That when the land in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same."

Section 7 of the State enabling act of March 21, 1864 (13 Stat., 30), made the following grant:

"That sections numbers sixteen and thirty-six, in every township, and where such sections have been sold or otherwise disposed of by act of Congress other lands equivalent thereto in legal subdivisions of not less than one quarter section, and as contiguous as may be, shall be, and are hereby, granted to said State for the support of common schools."

STATE CONSTITUTION.

By article 11, section 3, all lands, including the sixteenth and thirty-sixth sections, donated for the benefit of public schools, as well as other lands granted by Congress for educational purposes, and the proceeds thereof are solemnly pledged and set apart for educational purposes.

FEDERAL LEGISLATION.

A limitation upon the grants of public lands to Nevada, in so far as minerals may be found therein, was made by the act of July 4, 1866 (14 Stat., 85):

"That in extending the surveys of the public lands in the State of Nevada the Secretary of the Interior may, in his discretion, vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country; and in all cases lands valuable for mines of gold, silver, quicksilver, or copper, shall be reserved from sale."

The provisions of this act were accepted by the State through its legislative assent of February 13, 1867.

By the act of June 16, 1880 (21 Stat., 287), the original grant in place of school lands to the State of Nevada was changed to a grant of quantity in the manner following:

"Whereas, the Legislature of the State of Nevada on March eighth, eighteen hundred and seventy-nine, passed an act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections therein, and relinquishing to the United States all such sixteenth and thirty-sixth sections in said State as have not been heretofore sold or disposed of by said State, and which act of said State is in words as follows, to wit:

"'An act accepting from the United States a grant of two millions or more acres of land in lieu of the sixteenth and thirty-sixth sections, and relinquishing to the United States all such sixteenth and thirty-sixth sections as have not been sold or disposed of by the State.

"'The people of the State of Nevada represented in senate and assembly do enact as follows:

"'SECTION 1. The State of Nevada hereby accepts from the United States not less than two millions of acres of land in the State of Nevada in lieu of the sixteenth and thirty-sixth sections heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by the State prior to the enactment of any such law of Congress granting such two millions or more acres of land to the State shall not be changed or vitiated in consequence of or by virute of such act of Congress granting such two millions or more acres of land, or in consequence of or by virtue of this act surrendering and relinquishing to the United States the sixteenth and thirty-sixth sections unsold or undisposed of at the time such grant is made by the United States.

"'SEC. 2. The State of Nevada, in consideration of such grant of two millions or more acres of land by the United States, hereby relinquishes and surrenders to the United States all its claims and title to such sixteenth and thirty-sixth sections in the State of Nevada heretofore granted by the United States as shall not have been sold or disposed of subsequent to the passage of any act of Congress that may hereafter be made granting such two millions or more acres of land to the State of Nevada: *Provided*, That the State of Nevada shall have the right to select the two millions or more acres of land mentioned in the act':

"Therefore

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there be, and are hereby, granted to the State of Nevada two million acres of land in said State in lieu of the sixteenth and thirty-sixth sections of land heretofore granted to the State of Nevada by the United States: *Provided*, That the title of the State and its grantees to such sixteenth and thirty-sixth sections as may have been sold or disposed of by said State prior to the passage of this act shall not be changed or vitiated in consequence of or by virtue of this act.

"SEC. 2. The lands herein granted shall be selected by the State authorities of said State from any unappropriated, nonmineral, public land in said State, in quantities not less than the smallest legal subdivision; and when selected in conformity with the terms of this act the same shall be duly certified to said State by the Commissioner of the General Land Office and approved by the Secretary of the Interior.

"SEC. 3. The lands herein granted shall be disposed of under such laws, rules, and regulations as may be prescribed by the Legislature of the State of Nevada: *Provided*, That the proceeds of the sale thereof shall be dedicated to the same purposes as heretofore provided in the grant of the sixteenth and thirty-sixth sections made to said State.

"SEC. 4. This act shall take effect from and after its passage."

DECISIONS OF THE DEPARTMENT.

The policy of Congress, in dealing with mineral lands, as expressed in the statutory rule of construction prescribed by the joint resolution of January 30, 1865 (13 Stat., 567), was recognized in the Secretary's instructions of May 20, 1870 (Copp's U. S. Mining Decisions, 31), wherein it was said:

"SIR: I have received your letter of the 10th instant, in relation to the right of the State of Nevada to sections 16 and 36 of each township, for school purposes, when such sections are found to contain mines.

"The seventh section of the enabling act of 21st March, 1864, passed at the first session of the Thirty-eighth Congress, grants to said State said sections, unless sold or otherwise disposed of by any act of Congress.

"Joint resolution of the 30th January, 1865 (13 Stat., 567), declares: 'That no act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations, to aid in the construction of roads, or for other purposes, or to extend the time of grants heretofore made, shall be so construed as to embrace mineral lands, which in all cases shall be, and are, reserved exclusively to the United States, unless otherwise specially provided in the act, or acts, making the grant.'

"This joint resolution prescribes a rule of construction which, applied to the act, would exclude from its operation mineral lands. Such lands are reserved exclusively to the United States unless 'otherwise specially provided' in the act making the grant.

"In view of this legislation, and of the considerations set forth in your letter, it seems to be clear that an executive officer must regard a section of land, No. 16 or 36 situate in Nevada and 'rich in minerals,' as the property of the United States and not as passing to the State under the act and should deal with it accordingly."

DECISIONS OF THE COURTS.

The announcement of the Supreme Court of the United States that Congress followed a settled policy in the disposition of mineral lands, and that a grant, therefore, of sections 16 and 36 for school purposes did not include mineral lands, though such lands were not in terms excepted therefrom, was first made at the October term, 1876, in the case of Heydenfeldt *v.* Deney Gold & Silver Mining Co. (93 U. S., 634); but, not resting its decision entirely on this general conclusion, the court said:

"These views dispose of this case; but there is another ground equally conclusive. Congress, on the 4th of July, 1866 (14 Stat., 85), by an act concerning lands granted to the State of Nevada, among other things, reserved from sale all mineral lands in the State and authorized the lines of surveys to be changed from rectangular, so as to exclude them. This was doubtless intended as a construction of the grant under consideration; but whether it be correct or not, and whatever may be the effect of the grant in its original shape, it was clearly competent for the grantee to accept it in its modified form and agree to the construction put upon it by the grantor. The State, by its legislative act of February 13, 1867, ratified that construction and accepted the grant with the conditions annexed.

"We agree with the Supreme Court of Nevada that this acceptance 'was a recognition by the legislature of the State of the validity of the claim made by the Government of the United States to the mineral lands.'

"It is objected that the constitution of Nevada inhibited such legislation, but the supreme court of the State, in the case we are reviewing, held that it did not (10 Nev., 314); and we think their reasoning on this subject is conclusive."

COMMENT.

The grant to this State has been included herein, for the reason that it was under its provisions the Supreme Court first recognized the "policy" of Congress in dealing with mineral lands as an essential element in the construction of the school grant, a doctrine which received a fuller discussion and broader recognition in the later case of Mining Co. *v.* Consolidated Mining Co. (102 U. S., 167).

Prior thereto Congress had by the joint resolution of January 30, 1865, supra, and the act of July 4, 1866, supra, definitely indicated its purpose to exclude mineral lands from the school grant, and this intention was carried into effect by the department May 20, 1870, supra, from all of which the reasons moving the State to ask for a grant of quantity, in lieu of one in place, are fully apparent.

THE STATE OF COLORADO.

The grant of school lands was made to this State by the enabling act of March 3, 1875 (18 Stat., 474), by which it is provided:

"SEC. 7. SCHOOL LANDS.—The sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands equivalent thereto in legal subdivisions of not more than one-quarter section, and as contiguous as may be, are hereby granted to said State for the support of common schools."

"SEC. 14. SCHOOL LANDS—HOW SOLD.—That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than $2.50 per acre, the proceeds to constitute a permanent school fund, the interest of which to be expended in the support of common schools.

"SEC. 15. MINERAL LANDS EXCEPTED.—That all mineral lands shall be excepted from the operation and grants of this act."

The State was admitted to the Union by proclamation of the President August 1, 1876 (19 Stat., 665).

STATE CONSTITUTION.

Article 9 of the constitution provides:

"SEC. 9. State board of land commissioners. The governor, superintendent of public instruction, secretary of state and attorney general, shall constitute the State board of land commissioners, who shall have the direction, control, and disposition of the public lands of the State, under such regulations as may be prescribed by law.

"SEC. 10. SELECTION AND CONTROL OF PUBLIC LANDS.—It shall be the duty of the State board of land commissioners to provide for the location, protection, sale, or other disposition of all the lands heretofore or which may hereafter be granted to the State by the General Government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor. No law shall ever be passed by the general assembly granting any privileges to persons who may have settled upon any such public lands subsequent to the survey thereof by the General Government by which the amount to be derived by the sale or other disposition of such lands shall be diminished, directly or indirectly. The general assembly shall, at the earliest practicable period, provide by law that the several grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust subject to disposal, for the use and benefit of the respective objects for which said grants of land were made, and the general assembly shall provide for the sale of said lands from time to time, and for the faithful application of the proceeds thereof in accordance with the terms of said grants."

STATE LEGISLATION.

The Revised Statutes of Colorado, 1908, provide:

"5181. SALE OF SCHOOL LANDS—AUCTION—MINIMUM PRICE (sec. 62).—All lands granted by Congress to the State for the support of common schools, being sections sixteen and thirty-six, and all that may be selected in lieu of said sections, are hereby withdrawn from market, and the sale thereof prohibited: *Provided*, Parcels of not less than forty acres of such land may be sold when the State board is of the opinion that the best interests of the school fund will be served by offering such parcel for sale: *Provided further*, That such land shall only be sold at public auction, and at not less than $3.50 per acre: *Provided*, That school lands shall not be offered for sale except upon the conditions hereinafter provided for the sale of other State lands."

"5218. EXCHANGE OF LANDS IN FOREST RESERVES (sec. 99).—The State board of land commissioners is hereby authorized and empowered to exchange any lands the income from which is devoted to the public schools of Colorado, the State university, the State agricultural college, penitentiary, internal improvements, saline or any other lands which may be under the control of said State of Colorado by the Congress of the United States, and which lands are situated within the exterior boundary line of any Federal forest reserve which may have been heretofore, or shall be hereafter established, for such unappropriated Federal lands in the State of Colorado as the State board of land commissioners may select; and the register of said land board is hereby empowered to sign all papers necessary to such transfer, under the direction of said board."

STATE OF WASHINGTON.

By sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota, to enter the Union, a grant of school lands was made as follows:

"SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

"SEC. 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than $10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

"SEC. 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, said States are hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said States, in lieu thereof, for the use and the benefit of the common schools of said States.

"SEC. 19. That all lands granted in quantity or as indemnity by this act, shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the respective States entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said States the number of acres in each heretofore donated by Congress to said Territories for similar objects."

The State was admitted to the Union by proclamation, November 11, 1889.

Act of December 18, 1902 (32 Stat., 756):

"That in all cases where sections sixteen and thirty-six, or either or any of them, or any portion thereof, have been occupied by actual settlers prior to survey thereof, and the county commissioners of the counties in which said sections so occupied as aforesaid are situated, have, under said act of Congress of March second, eighteen hundred and fifty-three, located or selected other lands in sections or fractional sections, as the case may be, within their respective counties, in lieu of said section so occupied as aforesaid, the lands so located or selected, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State by said act of February twenty-second, eighteen hundred and eighty-nine, and the title of said State thereto is hereby confirmed.

"SEC. 2. That where any lands appropriated by Congress to said Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six were fractional in quantity, or where one or both were wanting by reason of the township being fractional, or from any natural cause whatever, or where section sixteen or thirty-six were patented by pre-empters, have been selected and appropriated as provided in said act of Congress of February twenty-sixth, eighteen hundred and fifty-nine, the lands so selected and appropriated, when the same shall have been approved by the Secretary of the Interior, shall be deemed and taken to have been granted to said State of Washington by the said act of February twenty-second, eighteen hundred and eighty-nine, and the title thereto confirmed."

STATE CONSTITUTION.

By Article XVI, section 1, of the constitution adopted by the State of Washington, it is provided:

"All the public lands granted to the State are held in trust for all the people, and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the State; nor shall any lands which the State holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States."

Section 2 of the same article makes the following provision:

"None of the lands granted to the State for educational purposes shall be sold otherwise than at public auction to the highest bidder; and the value thereof, less the improvements, shall, before any sale, be appraised by a board of appraisers, to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of improvements thereon shall be excluded."

STATE LEGISLATION.

Section 6650, General Statutes of Washington:

"The board of State land commissioners shall have authority and power to relinquish to the United States all lands heretofore selected by the Territory of Washington, or any officer, board, or agent thereof, or by the State of Washington, or any officer, board, or agent thereof, or which may be hereafter selected by the State of Washington, or any officer, board, or agent thereof, in pursuance of any grant of public lands made by the United States or the Congress thereof to the Territory or State for any purpose or upon any trust whatever, the selection of which has failed or been rejected, or shall fail or shall be rejected for any reason."

Section 6661, General Statutes, provides for the appraisement and sale of lands granted to the State after due inspection and classification, at a price of not less than $10 per acre for lands granted for educational purposes. By section 6635, paragraphs 1, 2, and 3, Codes and Statutes of 1913, the following provisions are made:

"SEC. 6635–1. For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the State for common schools, educational, penal, reformatory, charitable, capitol building or other purposes, as have been or may be lost to the State, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the State to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the commissioner of public lands, with the advice and approval of the board of State land commissioners and the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the State, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of this act, of lands of the United States of equal area and value.

"SEC. 6635–2. Upon the making of any such agreement, the board of State land commissioners shall be empowered and it shall be their duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the State, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in section 6635(1), and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the State in lieu of the lands aforesaid, to the end that the State shall obtain lands in lieu thereof of equal area and value.

"SEC. 6635–3. Whenever the title to any lands selected under the provisions of this act shall become vested in the State of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the State of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the State relinquished under the provisions of this act, which deed shall convey to and vest in the United States all the right, title and interest of the State of Washington therein."

DECISIONS OF THE STATE AND FEDERAL COURTS.

In Wheeler *v.* Smith (5 Wash., 704) the court, commenting on the reservation of sections 16 and 36 created by the act of 1853, for the subsequent State of Washington, said:

"This section had been followed up by section 10 of the enabling act approved February 22, 1889, before the plaintiff's placer locations were made, making a present grant of sections 16 and 36 to the State, to take effect as soon as the State was organized."

The language thus used, however, was applied in a case where an effort was made to secure title under a public land law to a school section after the passage of the enabling act and the survey of the land.

State of Washington *v.* Whitney (10 Pac. Rep., 116). This decision of the Supreme Court of the State of Washington passed upon two questions, namely, (1) the character of the grant as made by the enabling act, and (2) the effect of the amendatory act of February 28, 1891.

Under the first point it held:

"We therefore hold that the words of grant in our enabling act are words of present grant, and that when, by the adoption of its constitution, the State affirmed the provisions of the enabling act and such constitution was approved by the United States, and the State of Washington thereupon fully admitted into the Union, the grant defined in the enabling act took effect as of its date and passed the entire title of the United States as fully and completely as though such sections 16 and 36 had been previously surveyed and were then capable of exact identification."

Under the second point it was held that the act of Congress February 26, 1859 (11 Stat., 385), was a general act relating to preemptions and provided that where settlements made before a survey of the lands in the field were found to have been on sections 16 and 36, such sections should be subject to preemption claim of the settler. The amendment of this general statute by the act of February 28, 1891 (26 Stat., 796), was not intended to nor did it operate as a repeal of the enabling act, which was special in its character and limited to the States then under consideration.

The State of Washington *v.* Johanson (26 Wash., 668). This case involved the title of a school indemnity selection made and approved prior to the enabling act, as against a settler subsequent thereto.

The court recited at length the provisions contained in the act of March 2, 1853 (10 Stat., 172), reserving lands for the benefit of the Territory; the act of February 26, 1859 (11 Stat., 385), providing for indemnity, and applicable to all the Territories; and, finally, of the enabling act of February 22, 1889 (25 Stat., 676).

The court pointed out at considerable length that the provisions authorizing indemnity selections on behalf of the Territory were made for the protection of settlers, of whom it was said:

"It was known that such settlers would occupy these lands in advance of the surveys. The injustice of denying a bona fide settler the right to acquire title to land he should so occupy and improve in ignorance of its true location was so manifest that legislation was necessary for its protection. * * *

"The conditions anticipated by Congress actually happened, settlements were made upon the public domain within the Territory prior to the extension of the public surveys over it. Certain of these settlements were found to fall within sections 16 and 36, and the Government, recognizing the settler's prior rights, patented the land to the settler. In lieu of certain lands occupied and lost to the use of the common schools in this way the board of county commissioners, pursuant to authority expressly granted them by Congress, selected the lands in controversy. This selection was pursuant to the same authority approved by the Secretary of the Interior. The lands so selected stood from that time until the passage of the enabling act withdrawn from settlement in place instead of lands which by that act, would, without question, have passed to the State under the descriptive terms in section 10 thereof had they not 'been sold or otherwise disposed of.' * * *

"Reading all of these acts together, there can be no mistake as to the intent of Congress. It intended these lands for the use of the common schools of the State, and intended to grant them to the State for that purpose when it passed the enabling act."

On appeal, this case was considered by the Supreme Court of the United States (190 U. S., 179), wherein the decision of the State court was affirmed, the court saying:

"Tested by this rule, it is obvious that Congress intended that Washington should receive full sections 16 and 36, or, in case of a failure by reason of prior settlement or from natural causes, the equivalent of such sections, and designated the Secretary of the Interior as the officer to approve any selections made by the Territory. The act of 1859 is as applicable to Washington as to any other Territory, notwithstanding

that there was a special statute passed in 1853 in respect to it. While ordinarily a special law is not repealed by a subsequent general statute, unless the intent so to do is obvious, yet there is no rule which prevents the latter from applying to cases not provided for by the former. It is true the act of 1859 refers to the act of 1826 in reference to selections, and the act of 1826 designated the Secretary of the Treasury as the officer to select. * * *

"But still further, it appearing that some question had been mooted as to the intent of Congress in respect to these matters the confirmatory statute of 1902 was enacted, and that obviously removes all doubt. It confirms the title to selected lands 'when the same shall have been approved by the Secretary of the Interior.' This does not refer alone to future action by the Secretary, but ratifies that which he has already done. He has approved this selection and the act of 1902 places the title of the State beyond controversy."

DEPARTMENTAL DECISIONS.

In the case of Washington *v.* Geisler, decided March 8, 1913 (41 L. D., 621), the department collated its prior decisions construing the grant to this State, considered the decision of the State court in State *v.* Whitney (120 Pac. Rep., 116), and adhered to its former line of decisions that the State takes no title until the school sections are identified by survey, and that prior thereto it is competent for Congress to make other disposition of the land.

SPECIAL PLAN OF ADJUSTMENT BETWEEN THE STATE AND DEPARTMENT OF AGRICULTURE—MEMORANDUM OF AGREEMENT.

It is agreed between the Department of Agriculture of the United States of America, through D. F. Houston, the Secretary of Agriculture, and the State of Washington, through Clark V. Savidge, its commissioner of public lands, with the consent and approval of the board of State land commissioners and the attorney general of said State, acting under and pursuant to chapter 102 of the laws of Washington for 1913, that the following plan of adjustment may be adopted to the end that the State of Washington may satisfy deficiencies of lands granted to the State for common-school purposes (secs. 16 and 36), occasioned by the inclusion of such lands prior to survey thereof within the national forests and the Olympic National Monument in said State, and by homestead settlements thereon prior to survey and inclusion within the reservations named, and that the details of such plan are to be worked out as soon as practicable.

First. In order to carry out the plan above expressed, it is agreed that a representative be appointed by the Secretary of Agriculture and a representative be appointed by the Board of State Land Commissioners of the State of Washington, and that such representatives shall make, with such assistance as may be necessary (*a*) an examination upon the ground of all school sections within the above-named reservations unsurveyed at the time of the establishment of such reservations, excepting those which have already been relinquished to the United States as a basis for the selection of lieu lands; and (*b*) an examination upon the ground of all school sections within such reservations upon which settlements were made prior to survey and inclusion within such reservations and have not been abandoned, for the purpose of determining the value and area thereof, and shall report their findings to the Secretary of Agriculture and the commissioner of public lands for final approval.

Second. Such representatives shall also make an examination upon the ground of lands equivalent in area and value to the school sections mentioned in paragraph one hereof lying within the present boundaries of national forests in the State of Washington in such position that when eliminated therefrom all will lie outside the new exterior boundaries of such forests, to the end that upon such elimination such lands may be available for selection in lieu of the lands mentioned in paragraph one hereof. It is agreed that the lands to be eliminated for selection by the State shall include an area sufficient to compensate the State as nearly as possible for areas, if any, lost through the existence of fractional school sections resulting from the public land surveys within such reservation.

Third. It is agreed that upon the completion of the examination of the lands in the field as herein provided and upon agreement of the Secretary of Agriculture and the board of State land commissioners as to the lands to be selected in lieu thereof, the Secretary of Agriculture will recommend to the Congress that it enact legislation to permit the selection of the lands by the State.

Fourth. It is agreed that the salary and expenses of the representatives above referred to who is to be appointed by the Secretary of Agriculture shall, if the Congress upon recommendation of the Secretary shall appropriate sufficient funds for the purpose, be paid by the United States Department of Agriculture, and that the salary and ex-

penses of the representative appointed by the commissioner of public lands shall be paid by the State of Washington, and that the salaries and expenses of any assistants employed by such representatives to carry out this agreement shall be borne jointly by the United States and the State of Washington, provided that Congress shall have previously appropriated sufficient funds to pay the share of the salaries and expenses of such assistants to be borne by the United States under this agreement.

Fifth. The undersigned agree to the above proposition and agree to carry it out as far as they have official power and authority to do so.

D. F. HOUSTON,
Secretary of Agriculture.
C. V. SAVIDGE,
Commissioner of Public Lands of the State of Washington.

DECEMBER 22, 1914.

Approved.

C. R. JACKSON,
J. W. BIRSLAWN,
E. W. FERRIS,
Board of State Land Commissioners of the State of Washington.
W. V. TANNER,
Attorney General of the State of Washington.

NOTE.—To enable the Secretary of Agriculture to carry out this agreement, Congress made an appropriation of $50,000 by act of March 4, 1915 (38 Stat., 1113). No. exchanges have yet been effected under this plan.

THE STATE OF MONTANA.

The grant of lands for common schools was made by sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota to enter the Union. For the terms of the grant, see State of Washington, herein.

The State was admitted to the Union by proclamation November 8, 1889.

STATE CONSTITUTION.

Article 17 of the State constitution:

"All lands of the State that have been or that may be hereafter granted to the State by Congress * * * shall be public lands of the State, and shall be held in trust for the people, to be disposed of as hereafter provided, for the respective purposes for which they have been or may be granted, donated, or devised; and none of such land, or any estate or interest therein, shall ever be disposed of except in pursuance of general laws providing for such disposition, nor unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the State; nor shall any lands which the State holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of, except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States."

STATE LEGISLATION.

Section 2153, Code of Montana, 1907:

"No land heretofore granted the State must be sold for less than $10 per acre, but where land is not worth such sum it may be leased for a term not exceeding five years and at a rental to be determined by the board."

Section 2161, Code of 1907, regulating the sale of school lands, also provides:

"No land shall be sold for less than $10 per acre nor for less than its appraised value, and the amount of the purchase money to be paid at the time of the sale will be not less than thirty per cent of the whole amount."

Section 2155:

"All selections of land must be made in legal subdivisions, and when the selection has been made and approved by the board, the governor must take the necessary steps to procure the approval of the Secretary of the Interior and the issuance of patents for the same by the United States to the State of Montana: *Provided*, That not more than two hundred thousand acres shall be selected in any one county of the State, unless it shall satisfactorily appear to the State board of land commissioners that no lands can be selected in those counties of the State wherein a less quantity than two hundred thousand acres have been selected."

Section 2159:

"That no further selections of any indemnity school land or of any land for any of the State institutions of learning, or for public buildings, shall be made in any county in which the State has already selected one hundred thousand acres or more of lands in the aggregate for such purposes."

Section 2195 authorizes the governor to execute any deeds of conveyance necessary to correct errors or mistakes arising in the adjustment of the school grant, or the distribution of lands included therein.

Section 2212 authorizes the sale to the United States for reclamation purposes of any land now or hereafter owned by the State of Montana and needed for such irrigation and reclamation work to the United States at the minimum price of $10 per acre, together with a right of way over all lands owned by the State for ditches, canals, tunnels, etc., in furtherance of the reclamation of arid lands by the United States.

[Senate bill No. 161. Introduced by committee on public lands.]

AN ACT Authorizing the State land board to contract and agree with the United States for the waiver of the State's rights to unsurveyed school sections in forest reserves, and to accept lands in lieu thereof, and validating agreements heretofore made for that purpose.

Be it enacted by the Legislative Assembly of the State of Montana:

SECTION 1. That the State Board of Land Commissioners of the State of Montana, be, and are hereby, authorized and empowered to enter into contracts or agreements with the United States, or any department thereof, having jurisdiction, waiving and relinquishing to the United States any and all rights of the State of Montana in and to sections sixteen and thirty-six of each township, when said sections are situated within a Federal forest reserve, and are at the date of such contract, or agreement unsurveyed: *Provided*, That the State of Montana shall in lieu of the rights so waived and relinquished, receive from the United States other lands equal in area or value, and all contracts or agreements heretofore entered into between the State Board of Land Commissioners of the State of Montana, and the United States or any department thereof relative to the waiving by the State of Montana of its rights to sections sixteen and thirty-six in any township in said State and the selection of lieu lands therefor by said State either according to area or value be and the same are hereby ratified, confirmed, and validated.

SEC. 2. All acts and parts of acts in conflict herewith are hereby repealed.

SEC. 3. This act shall be in full force and effect from and after its passage and approval.

W. E. MCDOWELL,
President of the Senate.
J. E. MCNALLY,
Speaker pro tempore of the House.

Approved March 5, 1915.

S. V. STEWART, *Governor.*

Filed March 5, 1915, at 2.45 o'clock p. m.

A. M. ALDERSON, *Secretary of State.*

SPECIAL INDEMNITY.

At the last session of Congress, an act "authorizing the Secretary of the Interior to survey the lands of the abandoned Fort Assinniboine Military Reservation and open the same to settlement," received the approval of the President February 11, 1915 (Public, No. 244).

Section 7 of this act provided in part:

"That sections sixteen and thirty-six of the land in each township within said abandoned Fort Assinniboine Military Reservation, except those portions thereof classified as coal or mineral lands, shall be reserved for the use of the common schools of the State of Montana, and are hereby granted to the State of Montana: *Provided*, That the State may, if it so elects within one year from the date of the passage of this Act, accept subject to the reservation in the United States of the coal deposits therein the portion of said sections sixteen and thirty-six classified as coal lands, in full satisfaction of the grant herein made for common schools: *Provided*, That for all lands lost to the State because classified as coal or mineral indemnity may be taken as provided for in sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes."

DEPARTMENTAL DECISIONS.

In State of Montana *v.* Fannie Lipscomb, decided April 14, 1915 (not yet reported), the department, after a full citation of the authorities, again announced its adherence to the conclusion that the grant made by the act of February 22, 1889, must be administered and adjusted under the provisions of the amendatory act of February 28, 1891.

SPECIAL PLAN OF ADJUSTMENT, BY AGREEMENT, BETWEEN THE STATE AND AGRICULTURAL DEPARTMENT.

Memorandum of agreement made and entered into this 23d day of December, 1912, between the Department of Agriculture of the United States, through James Wilson, the Secretary of Agriculture, and the State of Montana, through Edwin Norris, its governor, looking toward a settlement and adjustment of all matters relative to the unsurveyed school lands within the national forests in the State of Montana.

It is agreed between the foregoing parties that the following proposition shall be the basis of settlement, the details to be worked out as soon as practicable.

That as to all unsurveyed school sections included within the national forests in the State of Montana, excepting those lost to the State by homestead settlement or which have already been relinquished to the United States as a basis for the selection of lieu lands, it is agreed that the State shall relinquish her claims and select as lieu lands other lands equivalent in acreage and values, lying along and within the present boundaries of the national forests in such position that when eliminated therefrom all will lie outside the new exterior boundaries of the national forests.

In order to carry out the proposition above expressed, it is further agreed that a representative appointed by the State Land Board of Montana and a representative appointed by the Secretary of Agriculture at the earliest possible date shall make, with such assistance as may be necessary, an examination upon the ground of the lands comprising the unsurveyed school sections to be relinquished and the lands to be selected in lieu thereof, and shall report their conclusion to the State land board and the Secretary of Agriculture for final approval.

In making lieu selections as above provided, it is understood that the State will select the equivalent area in several large tracts, some of which will be principally valuable for their timber and others for their forage, but that the State may have the right to select smaller tracts of not less than one section in any case.

It is further understood that after the representatives above mentioned have agreed upon the selections of lieu lands within the present boundaries of the national forests and along the boundaries thereof, as nearly as may be, equivalent in value to the sections 16 and 36 surrendered, that the Secretary of Agriculture will recommend an Executive order eliminating the lands so selected from the national forests, so that new boundaries thereto may be created and the lands so selected by the State be entirely without the national forests and be subject to the exclusive direction and control of the State, provided that the law at that time is such that the lands surrendered by the State will become a part of the national forest.

It is further understood that the salary and expenses of the representative above referred to appointed by the State Land Board shall be paid by the State of Montana, and the salary and expenses of the representative appointed by the Secretary of Agriculture shall be paid by the United States Department of Agriculture, and other expenses involved in making the examination of these areas shall be borne half by the State of Montana and half by the Forest Service.

The undersigned agree to the above proposition and agree to carry them out as far as they have official power and authority to do so.

[SEAL.] W. M. HAYS,
Acting Secretary of Agriculture.

[SEAL.] EDWIN L. NORRIS,
Governor of Montana.

NOTE.—No exchanges in pursuance of this agreement have yet been effected.

THE STATE OF NORTH DAKOTA.

The grant of lands for common schools was made by sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota to enter the Union. For the terms of the grant see State of Washington herein.

The State was admitted to the Union by proclamation, November 2, 1889

STATE CONSTITUTION.

Article 9 of the State constitution, section 155:

"After one year from the assembling of the first legislative assembly the lands granted to the State from the United States for the support of the common schools may be sold upon the following conditions and no other: No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the State shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words 'coal lands' shall include lands bearing lignite coal."

Section 158:

"No land shall be sold for less than the appraised value and in no case for less than $10 per acre."

STATE LEGISLATION.

Section 186, Revised Codes 1899, provides for the manner of sale and—

"No tract shall be sold for less than its appraised value and in no case for less than $10 an acre."

Section 204, Revised Codes, authorizes execution of deeds of reconveyance to the United States to correct errors in adjustment of the grant.

Section 216, Revised Code of 1899:

"No more than one-fourth of the common school lands of the State shall be sold within the first five years after they become salable under the provisions of sections 155 of the constitution nor more than one-half of the remainder within ten years after the same shall become salable as aforesaid. The residue may be sold at any time after the expiration of such ten years: *Provided, however*, That the coal lands of the State shall not be sold, but may be leased under the provisions of any law governing such leases. The words 'coal lands' include lands bearing lignite coal."

Act of March 13, 1901 (Assembly Laws 1901, p. 174) authorizes the lease of:

"All the common school lands and all other public lands of the State that are not of such value as will admit of appraisal at $10 or more per acre at the time of any regular appraisal."

SPECIAL INDEMNITY.

By an act approved March 2, 1907, Congress authorized the State of North Dakota to select other lands in lieu of lands erroneously entered in sections 16 and 36 within certain military reservations as follows:

"That the State of North Dakota be, and is hereby authorized to select, in lieu of lands embraced in homestead entries made and erroneously allowed prior to the passage of this act for lands in sections sixteen and thirty-six, within the limits of the abandoned Fort Rice and Fort Abraham Lincoln military reservations, in said State, other unappropriated surveyed nonmineral public lands of equal area situated within the limits of said State, in the manner provided in the act approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes': *Provided*, That such selection of lands by said State shall be a waiver of its right to the lands embraced in said homestead entries." (34 Stat., 1218.)

See "General legislation" herein as to character of grant to this State.

THE STATE OF SOUTH DAKOTA.

The grant for common schools was made by sections 10 and 11 of the act of February 22, 1889 (25 Stat., 676), enabling the States of Washington, Montana, South Dakota, and North Dakota to enter the Union. For the terms of the grant see State of Washington herein.

The State was admitted to the Union by proclamation November 2, 1889.

STATE CONSTITUTION.

Article 8 of the constitution provides, by section 4:

"After one year from the assembling of the first legislature, the lands granted to the State by the United States for the use of the public schools may be sold upon the following conditions and no other: Not more than one-third of all such lands

shall be sold within the first five years, and no more than two-thirds within the first fifteen years after the title thereto is vested in the State, and the legislature shall, subject to the provisions of this article, provide for the sale of the same.

"The commissioner of schools and public lands, the State auditor, and the county superintendent of schools of the counties severally, shall constitute boards of appraisal and shall appraise all schools land within the several counties which they may from time to time select and designate for sale, at their actual value under the terms of sale.

"They shall take care to first select and designate for sale the most valuable lands; and they shall ascertain all such lands as may be of special and peculiar value, other than agricultural, and cause the proper subdivision of the same in order that the largest price may be obtained therefor."

Section 5:

"No lands shall be sold for less than the appraised value, and in no case for less than $10 an acre."

STATE LEGISLATION.

Section 370, Revised Codes, 1903:

"Not more than one-third of the lands of any class granted to the State for educational or charitable purposes shall be sold within the first five years, and not more than two-thirds of such lands shall be sold within the first fifteen years after the date of the vesting of title thereto in the State. No more than one-tenth of the lands granted by the act of Congress of February eighteenth, eighteen hundred and eighty-one, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming for university purposes," and vested in the State of South Dakota by section 14 of the act of Congress of February twenty-second, eighteen hundred and eighty-nine, entitled "An act to provide for the division of Dakota into two States and enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Uniton on an equal footing with the original States, and to make donations of the public lands to such States," shall be offered for sale in any one year. Subject to the limitations herein expressed and contained in the constitution of the State and said acts of Congress, the board of school and public lands shall determine from time to time the quantity of lands of each class granted which shall be selected, and the quantity of each class which shall be selected in each of such counties. The board shall so apportion "the quantity to be selected that the most valuable lands may first be selected and designated for sale."

Section 374:

"No land shall be sold for less than the appraised value and in no case for less than $10 an acre."

(This section follows constitutional provision noted above.)

See also section 34, page 362, Assembly Laws of 1911, where similar provision is made.

SPECIAL ADJUSTMENT THROUGH AGREEMENT BETWEEN FORESTRY AND STATE.

In order to reach an amicable agreement between the Federal Government and the State of South Dakota for the disposition of such school sections as are situated within the Black Hills and Harney Forests, in the State of South Dakota, the following agreement was entered into by the Forest Service, United States Department of Agriculture, under the approval of the Secretary, and the commissioner of schools and public lands for the State of South Dakota:

Memorandum of agreement between the Bureau of Forestry of the Department of Agriculture of the United States, through Mr. Gifford Pinchot, Forester, and the State of South Dakota, through its commissioner of schools and public lands, O. C. Dokken, and its attorney general, S.W. Clark, looking to a settlement and adjustment of matters of difference relative to school lands in the Black Hills Forest Reserve.

It is agreed between the foregoing parties that the following proposition shall be the basis of settlement, the details to be worked out as soon as practicable:

1. As to the school sections, understood to be four in number, to which title vested in the State by reason of survey prior to the creation of a national forest: These will remain the property of the State and are not affected by this agreement.

2. As to all school sections not surveyed prior to the creation of the national forest: All the lands included therein, excepting those lost to the State by homestead settlement or entry, the State agrees to relinquish her claims and to select as lieu lands other lands equivalent in acreage and values, lying along and within the present boundaries of the national forest in such position that when eliminated therefrom all will lie outside the new exterior boundaries of the national forest.

3. That as to acreage of lands that have been entered or settled upon by homestead claimants, consisting so far as present known of about 40 entries, the question whether the State may select other lands in lieu thereof from national forest lands in the same manner as indicated in subdivision 2 hereof is left open for further consideration.

In order to carry out the purposes above expressed it is further agreed that a board shall be constituted composed of one representative appointed by the State and one by the Forester, the two to select a third, which board shall, at the earliest practicable date, make an examination upon the ground of the lands comprising the school sections to be relinquished and the lands to be selected in lieu thereof, the decision of said board to be final upon the question of equivalency.

In making lieu selections, as above provided, it is understood that the State may have the right to select this equivalent area in one or more large tracts or many smaller tracts, not less than one section in any case.

It is further understood that, after the board above mentioned has agreed upon the selections of lieu lands within the present boundaries of the reserve and along the boundaries thereof as nearly as may be equivalent in value to section 16 and 36 surrendered, that the Forester will use his best efforts to secure an executive order eliminating the lands so selected from the forest reserve, so that new boundaries thereof may be created and the lands so selected by the State be entirely without the forest reserve and be subject to the exclusive direction and control of the State.

The undersigned agree to the above proposition and agree to carry them out so far as they have official power and authority so to do.

January 4, 1910.

GIFFORD PINCHOT,
Forester.

O. C. DOKKEN,
Commissioner of Public Lands of South Dakota.

S. W. CLARK,
Attorney General for the State of South Dakota.

This agreement was forwarded to the Representatives to Congress from South Dakota for consideration and comment, and received the following indorsement:

Having been in conference and taking into consideration the above agreement, we hereby approve the same and agree to assist in carrying out these provisions as far as our official power extends.

January 17, 1910.

COE I. CRAWFORD,
ROBERT J. GAMBLE,
Senators.

EBEN W. MARTIN,
CHAS. H. BURKE,
Representatives.

In accordance with said agreement such action was taken and had, with the approval of the Secretary of the Interior, that the boundaries of said national forests were so modified by proclamation of the President February 15, 1912 (37 Stat., 1729), as to permit the State to receive by certification to the present time, 11,577.69 acres.

DEPARTMENTAL DECISIONS.

The department held, in South Dakota *v.* Riley (34 L. D., 657), that the State takes no title to any particular land until it is identified by survey, and prior to such identification the grant may be wholly defeated by settlement, leaving the State to assert its right for indemnity under the amendatory act of February 28, 1891. This was followed in the case of South Dakota *v.* Delicate (34 L. D., 717).

The department held, however, in special instructions (35 L. D., 158), that the title of the State under the grant of 1889, is not affected by the inclusion of the land within a forest reservation prior to survey; that the State, if it does not desire to await extinguishment of the forest reserve, may select other lands in lieu of those included therein. This case cites the decision in the Riley case, and declares that it was not intended to hold therein that the establishment of a forest reservation, prior to survey, defeats the title of the State.

Again, in the case of the Black Hills National Forest (37 L. D., 469), it was said by the department that if the national forest is a permanent reservation, within the meaning of section 10 of the granting act, the school sections therein are, by the terms of said act excepted from the grant for school purposes; but if on the other hand the national forest is only a temporary reservation within the meaning of that act, the

title of the State will not attach so long as the reservation exists, in view of the fact that the lands were unsurveyed at the time the reservation was established.

THE STATE OF IDAHO.

The grant for the benefit of common schools was made by sections 4 and 5 of the act of admission, July 3, 1890 (26 Stat., 215), as follows:

"SEC. 4. That sections numbered sixteen and thirty-six in every township of said State, and where such sections or any part thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior.

"SEC. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, and such lands shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

"SEC. 13. That all mineral lands shall be exempted from the grants by this act. But if sections sixteen and thirty-six, or any subdivision, or portion of any smallest subdivision thereof in any township shall be found by the Department of the Interior to be mineral lands, the said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and the benefit of the common schools of said State.

"Sec. 14. That all lands granted in quantity or an indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects."

STATE CONSTITUTION.

Section 8 of article 9 of the constitution provides:

"It shall be the duty of the State board of land commissioners to provide for the location, protection, sale, or rental of all the lands heretofore, or which may hereafter be, granted to the State by the General Government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: *Provided*, That no school lands shall be sold for less than $10 per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the General Government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of lands were made, and the legislature shall provide for the sale of said lands from time to time for the sale of timber on all State lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: *Provided*, That not to exceed twenty-five sections of school lands shall be sold in any one year, and to be sold in subdivisions of not to exceed one hundred and sixty acres to any one individual, company, or corporation."

STATE LEGISLATION.

Section 1579, Revised Codes, directs the manner in which State lands shall be sold and declares:

"No land shall be sold for less than its appraised value nor for less than $10 per acre."

Section 1583 makes provision for the sale of State lands in conformity with the classification of farm units where Federal irrigation works justify such action.

Act of March 13, 1909 (Assembly Laws of 1909, p. 331), authorizes the State land board to enter into contracts with the Secretary of the Interior with respect to the irrigation of State lands adjacent to national irrigation projects.

Senate concurrent resolution No. 8:

"*Be it resolved by the Legislature of the State of Idaho:*

"Whereas, by an act dated July third, eighteen hundred and ninety, Congress granted to the State of Idaho about three million acres of public lands, including sections sixteen and thirty-six in every township of the State, for the support of common schools and in aid of various public institutions, with the right, where sections sixteen and thirty-six or any part thereof had been sold or otherwise disposed of by or under the authority of any act of Congress, to select other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be to the section in lieu of which the same was taken; and

"Whereas, by an act dated August eighteenth, eighteen hundred and ninety-four, Congress granted to the State of Idaho the right to apply for the survey and withdrawal of townships of public lands then remaining unsurveyed, and that such townships should be reserved upon the filing of the application for said survey from any adverse appropriation by settlement or otherwise, except under rights that might be found to exist of prior inception, for a period to extend from such application for survey until the expiration of sixty days from the date of the filing of the township plat of survey in the proper district land office, and pursuant to said act of Congress the State of Idaho made application for the survey of a large number of townships of public lands within the State of Idaho for the purpose of selecting the quota of lands donated the State; and

"Whereas the President of the United States has by proclamation established certain forest reserves within the State of Idaho embracing more than twenty-eight per cent of the total area of the State, including sections sixteen and thirty-six aforesaid, and the Department of the Interior has by rules and regulations denied the right of the State of Idaho to perfect its selections of public lands in townships now included in the forest reserves, but which were not included within the forest reserves at the time of the State's application for the survey thereof; and

"Whereas approximately one million acres of the lands so donated to the State of Idaho have not been selected and there are not sufficient unappropriated public lands within the State of Idaho outside such forest reserves of the value of $10 per acre to enable the State to make selection thereof; and

"Whereas the State board of land commissioners of Idaho have heretofore pretended to renounce the title of the State of Idaho to certain sections sixteen and thirty-six, amounting to more than two hundred thousand acres, and announces its intention of using such relinquished lands as a basis for making selections of other public lands, and such action of the State board of land commissioners was not authorized by any act of the Legislature of the State of Idaho and was in violation of the express terms of the admission bill and the constitution of Idaho: Therefore be it

"*Resolved*, That the State of Idaho hereby proclaims, declares, and asserts its ownership and title to all sections sixteen and thirty-six in every township granted by the United States to the State of Idaho and not heretofore disposed of by the State, in accordance with the donation act and the constitution and laws of the State of Idaho: Be it further

"*Resolved*, That the State board of land commissioners is hereby required to insist upon the right of the State to complete and perfect the State's selection of public lands in the forest reserves where the State made application for survey prior to the creation of such forest reserves, and that the board take all necessary proceedings to establish such right in the State: Be it further

"*Resolved*, That the Congress of the United States is hereby memorialized to require the Department of the Interior to ascertain what portions of sections sixteen and thirty-six, or any subdivision, or portion of any smallest subdivision, thereof, in any township, may be mineral lands, and to certify the same to the State of Idaho so that the State may select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof for the use and benefit of the common schools of said State: Be it further

"*Resolved*, That the representatives of Idaho in Congress be and they are hereby directed to aid the State board of land commissioners in establishing the right of the State to complete and perfect its title to public lands in forest reserves initiated by filing an application for the survey thereof: Be it further

"*Resolved*, That the Secretary of State forthwith transmit a copy of this resolution to each Representative in Congress from the State of Idaho: Be it further

"*Resolved*, That the State board of land commissioners and the legal department of the State of Idaho is hereby advised to take such steps as will bring about an early determination by the Supreme Court of the United States of the question of the

rights of the State to the sections sixteen and thirty-six included within forest reserves as hereinbefore stated."

Passed senate March 2, 1909.

Passed house March 4, 1909.

(Session Laws of 1909, p. 442.)

Act of February 8, 1911 (Session Laws 1911, p. 16):

"*Be it enacted by the Legislature of the State of Idaho:*

"SECTION 1. That the State board of land commissioners be, and is hereby, authorized, empowered, and directed to judiciously ascertain and locate the general grants of land made by Congress to the State of Idaho, and when said board shall find that sections sixteen and thirty-six, or any part or parts thereof, in every township of the State were sold or otherwise disposed of by or under the authority of any act of Congress prior to July third, eighteen hundred and ninety, on the admission of the State of Idaho into the Union, or said lands are found by the Secretary of the Interior, or the Secretary of Agriculture when necessary, select from the surveyed, unreserved, and unappropriated lands of the United States within the limits of the State of Idaho other lands equivalent thereto in area and value in legal subdivisions of not less than one-quarter section and as contiguous as may be to the section in lieu of which the same is taken.

"SEC. 2. That when the State board of land commissioners shall ascertain that sections sixteen and thirty-six, or any part thereof, granted to the State have been actually settled upon prior to the survey thereof by the General Government and are occupied by bona fide settlers claiming title thereto under the homsetead laws of the United States, then the said board shall be, and is hereby, authorized and empowered in its discretion, by and with the approval of the Secretary of the Interior, or the Secretary of Agriculture when necessary, to select from the surveyed, unreserved, and unappropriated public lands of the United States within the State of Idaho other lands equivalent in area and value in legal subdivisions and as contiguous as may be to the section in lieu of which the same is taken.

"SEC. 3. That when the State board of land commissioners shall ascertain that sections sixteen and thirty-six, or any part or parts thereof, granted to the State are or have been lawfully included and embraced within any forest or other reservation established under or by authority of any act of Congress, then the said board shall, by and with the approval of the Secretary of the Interior, or the Secretary of Agriculture when necessary, select from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the State of Idaho other lands equivalent thereto in area and value in legal subdivisions and as contiguous as may be to the section in lieu of which the same is taken: *Provided*, That if the board shall, upon examination or otherwise, determine that any lands owned by the State in such forest or other reservation borders on or in the vicinity of any lake, waterfall, spring, or other naturally advantageous site, or any natural cusiosity, or that for any other cause said lands are or in the future may have particular value to the State, then the board shall not certify such lands to the Secretary of the Interior as a basis for indemnity selections in lieu thereof, but the State of Idaho shall retain its title in said lands.

"SEC. 4. That when the State board of land commissioners ascertain that what would be, if surveyed, sections sixteen and thirty-six, or any part or parts thereof, granted to the State, falls upon any lake or navigable river and that the quantity of land intended to be conveyed as sections sixteen and thirty-six is lost to the State thereby, it shall be the duty of said board to apply to the Secretary of the Interior for permission to select indemnity lands in lieu of the loss in quantity so sustained by the State.

"SEC. 5. That all relinquishments of State lands heretofore made by the State board of land commissioners as a basis for the selection of indemnity lands in lieu thereof, and all selections of indemnity lands in lieu of lands so relinquished by the State, heretofore made by the State board of land commissioners, be, and the same are hereby, adopted, ratified, approved, and confirmed as of the date of such relinquishment and selection; and the State of Idaho hereby expressly relinquishes its title to all lands so relinquished by the said board: *Provided*, The selection of the indemnity lands in lieu thereof be approved by the Secretary of the Interior, and said lands so selected are certified for patent to the State of Idaho.

"SEC. 6. That the State board of land commissioners be, and the same is hereby, authorized and empowered by and with the approval of the Secretary of the Interior to relinquish the selections by the State of Idaho of those lands in township forty-four north, range two east, and township forty-four north, range 3 east, of Boise meridian, in Idaho, where the claim of the State thereto conflicts with the claims of certain settlers thereto, and such settlers have a prior equitable right thereto as found

by a commission appointed under House joint resolution Numbered Ten, passed by the Senate March second, nineteen hundred and nine: *Provided,* That the relinquishment of such selections shall not be made until the right of the State to select other indemnity lands in lieu thereof shall be recognized and announced by the Secretary of the Interior: *And provided further,* That the State shall not relinquish its title to any such lands when such relinquishment would inure to the benefit of any scrip holder or claimant.

"SEC. 7. An emergency existing, this act shall take effect and be in force from and after its passage and approval."

Act of March 4, 1911 (Session Laws of 1911, p. 85):

"*Be it enacted by the Legislature of the State of Idaho:*

"SECTION 1. That the State of Idaho hereby accepts the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States as amended by an act of Congress February twenty-eighth, eighteen hundred and ninety-one (Twenty-first Statutes at Large, page seven hundred and ninety-six), and the rights and privileges granted to States and Territories by said act.

"SEC. 2. That all relinquishments of State lands in place heretofore lawfully made by the State board of land commissioners as a basis for the selection of indemnity lands in lieu thereof, and all selections of indemnity lands in lieu of lands so relinquished by the State board of land commissioners, are hereby ratified, approved, adopted, and confirmed by the State of Idaho as of the date of such relinquishments and selections.

"SEC. 3. That an emergency existing therefor, this act shall take effect and be in force from and after its passage and approval."

Senate concurrent resolution No. 5 (Session Laws 1911, p. 793), recites again the grant of school lands to Idaho; the provisions of the act of August 18, 1894; the establishment of certain forest reserves within the State; the consequent loss to the State of the school lands to the extent of a million acres or more; the stated announcement that the Secretary of the Interior is about to promulgate a ruling that the State shall be no longer allowed to use unsurveyed school sections in forest and other reserves as a base for selection of other lands; the consequent loss to the school fund of the State; for which reasons—

"It is therefore resolved that the Representatives of Idaho in Congress are directed to aid the State land board in bringing about an adjustment of the conditions now existing between the Government and the State with respect to said school grant in order that Idaho may enjoy the full benefit of its grant, and that a committee be appointed consisting of the attorney general of the State, a member of the senate, and a member of the house, to confer with the Secretary of the Interior, and thus secure a recognition of the rights of the State."

SENATE JOINT MEMORIAL NO. 5.

The State Legislature of Idaho, at its present session, enacted the following joint memorial:

"*Be it resolved by the Senate of the State of Idaho (the House of Representatives concurring:*

"That the Congress of the United States be memorialized as follows:

"Whereas the State of Idaho has now pending with the Department of the Interior of the Federal Government applications for the clear-listing of approximately five hundred thousand acres of land which the State of Idaho has selected either by way of completing the original grants of land made to it by the Federal Government for various purposes or by way of lieu land selections which the State of Idaho has made in lieu of sections sixteen and thirty-six in each township within the State of Idaho, and which the said State has lost by reason of their inclusion within national forests, or for other reasons; and

"Whereas the State of Idaho was permitted by the Federal Government to make these selections in the belief that it would be speedily enabled to obtain title thereto, and is now spending large sums of money each year for the purpose of protecting from fire the timber growing upon such selected lands, and which timber is now ripe and ready for the market: Now, therefore, be it

"*Resolved,* That the Congress of the United States is hereby memorialized to enact such legislation as may be necessary to enable the President of the United States and the Department of the Interior to complete the clear listing and patenting to the State of Idaho, of the lands selected as aforesaid; and be it further

"*Resolved,* That a certified copy of this memorial be sent to each of the Members of the congressional delegation from this State in Congress, with the request that they employ their best efforts to secure action in the premises."

SPECIAL AGREEMENT.

In pursuance of a resolution adopted by the State land board July 11, 1911, a memorandum of agreement entered into under date of October 4, 1911, between the Secretary of the Department of Agriculture and the governor of the State of Idaho, and a supplemental agreement of December 10, 1912, between the Forester, the Assistant Forester, the governor of Idaho, and the State land commissioner of Idaho, a special plan of adjustment as to school lands within national forests was adopted, and the President of the United States, by proclamation of June 4, 1912 (37 Stat., 1743), and March 3, 1913 (37 Stat., 1777), modified the boundaries of certain national forests in the State of Idaho, to permit of the consummation of said plan, under such agreements, but no certifications have been made under said agreement.

DECISIONS OF THE COURTS.

Balderston *v.* Brady (17 Idaho, 567). This suit was commenced by a taxpayer who asked for a writ of prohibition against the threatened action of the State board of land commissioners to restrain them from relinquishing the right and title of the State of Idaho to certain lands theretofore selected by the board under the land grant made by the Federal Government to the State of Idaho.

The court said:

"Now there can be no question or doubt that the 'direction, control, and disposition of the public lands of the State' is vested in the State board of land commissioners. It is equally clear and certain that this power must be exercised 'under such regulations as may be prescribed by law.' Both of the foregoing sections of the constitution contain the same provision as to this limitation of power. The legislature is prohibited, however, from passing any law that would authorize a sale of school lands for less than $10 per acre or any sale or disposition other than 'at public auction.' * * *

"The constitution of this State was framed by the constitutional convention 11 months prior to the admission of the State into the Union, and it was ratified by the people some 8 months before the admission. Notwithstanding this fact, the people at that early date incorporated into the fundamental law of the State sections 7 and 8 of article 9, heretofore quoted, and thereby forbade the legislature authorizing any sale of land for less than $10 per acre or ever 'granting any privileges to persons who may have settled upon such public lands, subsequent to the survey thereof by the General Government, by which amount to be derived by the sale or other disposition of such lands be diminished, directly or indirectly.' It was provided that the legislature should enact laws whereby the general grants of lands made by Congress to the State should be 'judiciously located and carefully preserved and held in trust' for the several purposes and objects for which they were granted. The admission bill followed the provisions of the constitution, and by sections 8 and 11 thereof it is provided that none of the lands granted by Congress to the State should ever be sold for less than $10 per acre. It needs only to be called to mind to be at once apparent that the legislature can not authorize the land board or anyone else to do any act with reference to State lands that is forbidden by the constitution. Any gift of school or other State lands or relinquishment of the State's title is in violation of the fundamental laws of the State, and would be void."

Proceeding further the court incidentally discussed the character of the school grant made to the State and points out how widely it differs from the ordinary grant, and concludes, after distinguishing the decision of Heydenfelt *v.* Daney, that it is a grant in praesonti notwithstanding the fact that it includes both surveyed and unsurveyed land.

"This discussion, however, is collateral and incidental only to the main point with which we are here interested. Whether the Government through any of its agencies has the power to reclaim the school sections granted by the admission bill is immaterial so far as the Government is concerned, because Congress by the act of August 18, 1894 (28 Stat. L., 372), and other acts dealing with the public domain, has amply authorized the Interior Department to grant indemnity and lieu lands to the States for any and all lands lost or relinquished by the State. (Op. Atty. Gen. of Sept. 15, 1909; decision Secretary Interior in Heirs of Irwin *v.* Ewing and State of Idaho, filed subsequent to Sept. 15, 1909, and not yet officially reported.) The real question then recurs: Has the State authorized the relinquishment of sections 16 and 36 and has the State land board the authority to relinquish the State's right to such lands? But one answer can be given to this query. The authority for such an act can not be found in either the constitution or statute. It is therefore perfectly safe to say that no such power exists. We have hereinbefore said that the board must act under the law. It must find authority in the constitution and statute for its acts. No such authority as claimed exists, and it is clear that the State land board has no power to relinquish

or surrender the right or title of the State of Idaho to any of its school lands. If the State's title to any of these lands comprising sections 16 and 36 is questioned or denied by the department, then the duty of the State to secure an adjudication of the matter by the Federal Supreme Court is plain and unmistakable."

On motion to modify the former judgment in this case (18 Idaho, 238) the court said, in considering the character of the title under which Idaho held its school lands:

"In view of what we previously said it is perhaps proper to add here that it is clear to us, and has been admitted by the learned counsel on both sides, that in order to reach the conclusion that the State took no title under the admission bill (sec. 5) to sections 16 and 36, as construed by Secretary Hitchcock in South Dakota *v.* Delicate (34 L. D., 717), and South Dakota *v.* Riley (34 L. D., 657), it is necessary to eliminate the word 'unsurveyed' and give to it absolutely no meaning or significance whatever. Whether the State has title or not, and whatever the character of that title may be, still it is apparently within the power of the Government to prevent the State taking possession or acquiring any substantial benefits therefrom by withholding the public survey and thereby depriving the State of the evidence and means of proof of the identity of those sections. * * *

"The question as to when a school section has been 'lost,' so far as the State is concerned, is one to be determined by the Government in every case where the State makes application for lieu lands to reimburse such 'loss.' If the Government, therefore, holds that an unsurveyed school section, included in a forest reserve, or one which has been settled upon prior to survey, is thereby 'lost' to the State, it is then the unmistakable duty of the department to grant the State 'lieu' land for such 'loss' (U. S. Comp. Stats., 1901, p. 1483; Idaho admission bill, sec. 4), and the power of the board to take title to lands in 'lieu' of such loss as a base is beyond doubt."

The opinion of the Attorney General, referred to in the original decision, is reported in 27 Opinions, page 605, followed by a later opinion approving and extending the former, in 28 Opinions, 587, wherein it was held generally, that the right of the State of Idaho to make lieu selections pursuant to proceedings under the act of August 18, 1894, was defeated by the establishment of a forest reservation prior to any selections on behalf of the State.

Rogers *v.* Hawley (19 Idaho, 751). This case arose on a petition for a writ to restrain the State board of land commissioners from relinquishing the State's right to a certain section 36. The court thus states the cause of action:

"It is alleged that section 36, township 24 north, range 20 east, Boise meridian, is unsurveyed, but that when the survey is extended over the same, it will be section 36, according to the Government survey, and will therefore fall within the grant made to the State under the Idaho admission bill, whereby the United States granted to the State of Idaho every section 16 and 36 within the State for common school purposes. It is alleged that the State board of land commissioners threaten and are proceeding to assign and relinquish this section as a base for and in lieu of the selection of a like quantity of surveyed land, and this proceeding questions and disputes the power and authority of the board to make a relinquishment of an unsurveyed school section and take in lieu thereof surveyed lands.

"It is also alleged by the second cause of action that the State board of land commissioners in the year 1905 made a relinquishment and assignment of an unsurveyed school section, and took in lieu thereof section 14, township 4 north, range 41 east, Boise meridian, in Fremont County, and which latter section the land board now proposes to sell in the manner provided by law for the sale of school lands.

"The only question that requires our consideration in this case is the power and authority of the State land board to assign as a base for lieu land selections sections 16 and 36 in a forest reserve, or in any other part of the unsurveyed public domain within the State. In Balderston *v.* Brady (17 Idaho, 567; 107 Pac., 493; 18 Idaho, 238; 108 Pac., 272), this court considered the power of the board to make a relinquishment of lieu land selections in favor of settlers, and held that the board had no such power or authority. That decision was based on the provisions of sections 7 and 8 of article 9 of the constitution, which vests in the State land board the 'direction, control, and disposition of public lands of the State, under such regulations as may be prescribed by law,' subject, however, to the limitations that no school land should be sold for less than $10 per acre, and that the lands received from the land grants should be 'subject to disposal at public auction,' etc. The case at bar raises the question alone of the power and authority of the land board to exchange the right, title, or interest of the State in and to unsurveyed school sections for a like area of surveyed and segregated land."

The court then calls attention to the act of the State legislature of February 8, 1911 (Session Laws, p. 16), prescribing certain powers and duties of the State land board, in relation to the location, relinquishment, selection, and exchange with the National

Government of certain lands granted to the State by the General Government, adopting, ratifying, and approving the action of the State board in relinquishing certain State lands and selecting lands in lieu thereof; also to the act of March 4, 1911 (Session Laws, p. 85), accepting the provisions of sections 2275 and 2276 of the Revised Statutes of the United States, as amended by the act of Congress approved February 28, 1891 (21 Stat., 796), and the rights and privileges granted thereby, and ratifying and approving the actions of the State board of land commissioners under said act of Congress.

The court observes that counsel on both sides have addressed their chief argument to the question of the character of title the State acquires to its school lands under its grant, and remarks:

"As we view the question in the light of the recent acts of the legislature, it is not necessary or important that we consider the character or nature of the title the State has to unsurveyed sections 16 and 36 or any such sections as may have been settled upon prior to the survey thereof. In the first place it is admitted on both sides that the State took some kind of a title or equity under sections 4 and 5 of the admission bill to every section 16 and 36 within the State. Whether it be a title, absolute and indefeasible, or a mere inchoate right or 'floating equity' will make no difference with the conclusion we reach in this case, for the reason that the case does not involve a mere naked relinquishment of the State's right and interest, but it rather involves an exchange of unsurveyed, unidentified school sections for 'lands equivalent in area and value' to the sections in lieu of which the surveyed lands are taken. The board proposes to avail itself of the authority conferred by senate bill 47 (act of Feb. 8) and exchange the State's right in and claim to a certain unsurveyed and unidentified section 16, for a section that has been surveyed and of which the State can get immediate possession. There is no dispute but that the act in question confers the authority the board proposes to exercise, and if it is not in conflict with the State constitution, there can be no legal objection to the action the board proposes to take. If senate bill 47 is not valid it must be because it is in conflict with sections 7 and 8 of article 9 of the constitution."

The court then cites those sections at length, and in connection therewith considers the provisions of the State act of February 8, holding:

"This statute certainly does not authorize or direct a sale of unsurveyed sections 16 and 36, and is not, therefore, obnoxious to the constitution on the ground that it authorizes a sale of school lands for less than $10 per acre, or that it authorizes a disposal' of State lands in a manner other than 'at public auction.' It does not authorize the unqualified surrender or giving away State lands, for the reason that it requires the board to secure title to 'lands equivalent in area and value in legal subdivisions,' etc., as a condition precedent to a complete surrender of the State's title and interest in and to the unsurveyed sections so released. This statute does not authorize the relinquishment of a school section without the State receiving an equivalent therefor in the same kind of property, namely, lands equal in area and value to those released. After the transaction is complete, the State will have a fee simple title to surveyed lands equivalent in area and value to the unsurveyed lands exchanged therefor. The State will still have the same amount of land that it had in the first place, and it will be surveyed and identified. * * *

"We are of the opinion that senate bill 47 is the result of a constitutional exercise of the legislative power to regulate the procedure of the State land board in its dealing with State lands, and in prescribing the manner and method in which it shall acquire and perfect title to State lands and enter into actual possession and enjoyment of such property for the use and benefit of the State. This is a very different question from what it would be if the relinquishment were without consideration and amounted to an unqualified 'disposal' or alienation of the lands relinquished or released, and in this respect the present case differs essentially and vitally from the case of Balderston *v.* Brady."

The objection that the relinquishment under question was made prior to the passage of either the act of February 8, or March 4, 1911, and therefore without color of authority, was taken up by the court and disposed of by calling attention to the fact that both of these acts of the State legislature ratified previous relinquishments executed by the State board of land commissioners.

United States *v.* Bonners Ferry Lumber Co. (184 Fed. Rep., 187). This case involved the construction of the school grant made by the Idaho enabling act of July 3, 1890 (26 Stat., 215).

Sections 4 and 5 of the act were quoted by the court. Without deciding the question that was raised, whether prior to survey of the land the State acquires a vested interest, the court said, speaking of the right of the State prior to survey:

"Even if it be assumed that the United States has not the legal right to convey the land to third persons, or, by including them in reservations, permanently withheld

them from the State, it must be held at least that until the lands are surveyed it retains the legal title, and that the title of the State is therefore not complete."

Thus finding, it was held that, prior to such survey, the State could not grant any authority to remove timber from school sections, nor prevent the United States from recovering the value of timber so removed.

See also Azcusnaga Bros. *v.* Corta (115 Pac. Rep., 18, Idaho Supreme Court).

DECISIONS OF THE DEPARTMENT.

In Thorpe *v.* The State of Idaho (42 L. D., 15), the decision of the Supreme Court of the State of Idaho in Balderston *v.* Brady (107 Pac. Rep., 493) to the effect that sections 16 and 36 within Indian or other reservations, whether surveyed or unsurveyed, were not available as bases for school indemnity selections, was noted, the suspension thereafter, of such exchanges by the department, the subsequent acts of the State legislature to correct the situation, the decision of the supreme court of the State considering these enactments, in the case of Rogers *v.* Hawley (115 Pac. Rep., 687), declaring that all objection to making these exchanges had now been removed, whereupon the department reaffirmed its former decisions as to the validity of such selections, and directed the adjustment to proceed accordingly.

In The Heirs of Irwin *v.* The State of Idaho (38 L. D., 219), the department held that an application by the State for a survey, under the act of August 18, 1894 (28 Stat., 394), does not create any such preferential right of selection on behalf of the State as will prevent the subsequent inclusion of the lands within a national forest. This decision was adhered to, on motion for review, February 1, 1911 (39 L. D., 482).

THE STATE OF WYOMING.

The grant of school lands to this State was made by the act of admission, July 10, 1890 (26 Stat., 222).

In section 2, fixing the boundaries of the State, and providing for the Yellowstone National Park, it is said:

"The said State shall not be entitled to select indemnity school lands for the sixteenth and thirty-sixth sections that may be in said park reservation as the same is now defined or may be hereafter defined." (See 27 L. D., 25.)

Section 4:

"That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That section six of the act of Congress of August ninth, eighteen hundred and eighty-eight, entitled 'An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes,' shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable."

Section 5:

"That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

In section 8, dealing with university lands, it is provided that the minimum price of said lands shall be $10 per acre.

Again in section 11, providing specific grants of land in quantity for the State, a provision is made:

"That none of the lands granted by this act shall be sold for less than $10 per acre."

Section 13:

"That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township, shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in

legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and the benefit of the common schools of said State."

Section 14:

"That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved, and unappropriated public lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects."

STATE CONSTITUTION.

Section 13, article 7, of the constitution, provides:

"LAND COMMISSIONERS.—The governor, secretary of state, State treasurer, and superintendent of public instruction shall constitute a board of land commissioners, which, under direction of the legislature, as limited by this constitution, shall have direction, control, leasing, and disposal of the lands of the State granted, or which may be hereafter granted, for the support and benefit of public schools, subject to the further limitations that the sale of all lands shall be at public auction, after such delay (not less than the time fixed by Congress) in portions at proper intervals of time, and at such minimum prices (not less than the minimum fixed by Congress) as to realize the largest possible proceeds."

Article 18, section 1:

"LAND GRANTS ACCEPTED—PRICE LIMIT.—The State of Wyoming hereby agrees to accept the grants of lands heretofore made, or that may be hereafter made, by the United States to the State for educational purposes, for public buildings and institutions, and for other objects, and donations of money with the conditions and limitations that may be imposed by the act or acts of Congress making such grants or donations. Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths of the appraised value thereof, and for not less than $10 per acre."

STATE LEGISLATION.

Compiled Statutes of Wyoming, 1910 (sec. 607):

"ACCEPTANCE OF LANDS.—Under the provisions of article eighteen of the constitution of the State of Wyoming, the State of Wyoming hereby accepted the lands granted to this State by the act of Congress entitled 'An act to provide for the admission of the State of Wyoming into the Union, and for other purposes,' approved July tenth, eighteen hundred and ninety, for the purposes in the said act specified, and the said lands so donated by the United States of America to this State are hereby solemnly set apart to the purposes specified in the said act."

Section 608:

"RELINQUISHING LANDS.—Whenever, in the judgment of a majority of the members of either of the boards hereinbefore created, the interests of the State will be advanced by granting, conveying, or deeding to the Government of the United States of America any lands which have been heretofore granted, selected by, and patented to the State of Wyoming, then, in such case, said boards are hereby authorized and empowered to so grant, convey, and deed to the Government of the United States of America such lands. And the president of said boards and the commissioner of public lands are authorized and empowered to execute and deliver all necessary instruments to complete such grant or conveyance: *Provided, always,* That no such lands shall be so granted, conveyed, and deeded unless the Government of the United States of America shall and will permit and allow this State to select and have patented to it an equal area of other lands in lieu of the lands so reconveyed to the United States of America."

Section 629:

"HOW SOLD.—All State lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the board, except as provided in the last two preceding sections, and shall be sold at not less than three-fourths of the appraised value thereof, and for not less than $10 per acre."

SPECIAL EXCHANGE PROVISIONS.

Under the following acts of Congress the State of Wyoming was authorized to reconvey certain described school lands to the United States, and select other lands in lieu thereof: Act of April 23, 1900 (31 Stat., 139); act of March 31, 1906 (34 Stat., 92); act

of March 1, 1907 (34 Stat., 1055); act of April 12, 1910 (36 Stat., 295); act of August 24, 1912 (37 Stat., 438); act of May 25, 1914 (38 Stat., 381).

The authority of the State to consummate these exchanges being questioned, in view of the provisions in the State constitution with respect to the disposition of its school lands, the department held, January 31, 1908 (D–2439), that a reconveyance of these lands to the United States was a mere incident in the final adjustment of the grant to the State, and did not constitute a "sale or disposal" of the lands granted, within the meaning of the State constitution, and hence was not in contravention thereof.

DECISIONS OF THE DEPARTMENT.

By special instructions of June 4, 1898 (27 L. D., 35), the department held that the amendatory act of February 28, 1891, repealed so much of the proviso to section 2 of the granting act as declares that the State shall not be entitled to select school indemnity in lieu of sections 16 and 36 in the Yellowstone National Park.

THE STATE OF UTAH.

The grant for common schools was made by section 6 of the enabling act, July 16, 1894 (26 Stat., 107):

"SEC. 6. That upon the admission of said State into the Union, sections numbered two, sixteen, thirty-two, and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the second, sixteenth, thirty-second, and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain."

"SEC. 10. That the proceeds of lands herein granted for educational purposes, except as hereinafter otherwise provided, shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools, and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only."

"SEC. 13. That all land granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said State of Utah."

Utah was admitted as a State by proclamation of the President January 4, 1896. (29 Stat., 876.)

The act of May 3, 1902 (32 Stat., 188), extends to the State of Utah the provisions of the act of February 28, 1891 (26 Stat., 796):

"That all the provisions of an act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes be, and the same are hereby, made applicable to the State of Utah, and the grant of school lands to said State, including sections two and thirty-two in each township, and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said act, anything in the act approved July sixteenth, eighteen hundred and ninety-four, providing for the admission of said State into the Union to the contrary notwithstanding.

"SEC. 2. That wherever the words 'sections sixteen and thirty-six' occur in said act, the same as applicable to the State of Utah shall read 'sections two, sixteen, thirty-two, and thirty-six,' and wherever the words 'sixteenth and thirty-sixth sections' occur the same shall read 'second, sixteenth, thirty-second, and thirty-sixth sections,' and wherever the words 'sections sixteen or thirty-six' occur the same shall read 'sections two, sixteen, thirty-two, or thirty-six,' and wherever the words 'two sections' occur the same shall read 'four sections.'"

STATE CONSTITUTION.

It should be noted that no limitation is placed upon the price to be secured for school lands either in the constitution or in subsequent legislation. This for the reason that the grant itself contains no such limitation. By article 10 of the constitution, section 5, it is provided:

"The proceeds of the sale of land reserved by an act of Congress, approved February twenty-first, eighteen hundred and fifty-five, for the establishment of the University of Utah, and of all the lands granted by an act of Congress, approved July sixteenth, eighteen hundred and ninety-four, shall constitute permanent funds, to be safely invested and held by the State; and the income thereof shall be used exclusively for the support and maintenance of the different institutions and colleges, respectively, in accordance with the requirements and conditions of said acts of Congress."

Article 20:

"SECTION 1. LAND GRANTS ACCEPTED ON TERMS OF TRUST.—All lands of the State that have been or may hereafter be granted to the State by Congress, and all lands acquired by gift, grant, or devise from any person or corporation, or that may otherwise be acquired, are hereby accepted and declared to be the public lands of the State, and shall be held in trust for the people, to be disposed of as may be provided by law, for the respective purposes for which they have been or may be granted, donated, devised, or otherwise acquired."

STATE LEGISLATION.

By title 75 (Compiled Laws of Utah, 1907, p. 827), dealing with the State lands, provision is made (sec. 2321) for the creation of a board of land commissioners, to control State lands (sec. 2325).

By section 2330 all selections are required to be made according to the United States survey in legal subdivisions, and the board is authorized to relinquish the claims of the State in any particular tract of land upon which at the time of selection a bona fide claim had been initiated by an actual settler.

Section 2336 directs the manner of sale, and provides that no lands shall be sold for less than the appraised value.

Section 2336x makes provision for the sale of State lands within the area of Government irrigation works.

COURT DECISIONS.

In United States *v.* Elliot (7 Utah, 389), considering the character of title taken by the State to its school lands under the organic act, the court held that the reservation thus established was absolute, and as soon as the lands were surveyed they ceased to be public domain open to settlement, and said:

"In Ferry *v.* Street (4 Utah, 521; 7 Pac. Rep., 712; 11 Pac. Rep., 571), this court, speaking of school lands, said that, by the decisions of the Supreme Court of the United States 'the various acts of Congress mentioned reserving portions of the public lands of the United States to the Territories or States, vest the title to such lands so reserved in the Territories or States when the lands are surveyed, or when they are bounded or ascertained. Until such time, the obligation is executory, and the title remains in the Federal Government.' In the case of Newhall *v.* Sanger (92 U. S., 761), the Supreme Court of the United States, by Davis, J., said: 'The words "public lands" are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws.' This decision was rendered nearly ten years before the law under which the present case is brought was passed, and it can not be presumed that Congress was ignorant of it. It is a rule in the construction of statutes that where the legislative branch of the Government has reproduced language in statutory enactments which has been judicially construed it must be taken as using the words in accordance with the judicial construction previously given them, unless a contrary reason plainly appears from the other language used. (The Abbotsford, 98 U. S., 440.) But in the present instance no language is used in the statute under which this case is brought indicating that the words 'public lands' are used in a different sense from the definition of them given in Newhall *v.* Sanger, but, on the contrary, the meaning given seems to have been in the minds of those who drafted the law."

SPECIAL EXCHANGE LEGISLATION.

The act of March 4, 1915 (38 Stat., 1212), authorized the Secretary of the Interior to issue patent to the State of Utah for certain lands described, comprising in the whole 4,197.31 acres, "being a portion of the lands segregated to the State of Utah by

approval of the Secretary of the Interior February 1, 1908, under section 4 of the act of August 18, 1894 (28 Stat., 372–422), and the act amendatory thereof and supplemental thereto, commonly known as the Carey act, in exchange for unsurveyed State school lands within national forests and certain acreage of township deficiency in surveyed townships in the State of Utah."

Following a description of the lands to be received in exchange by the United States is a proviso:

"That said patent shall not issue until the State of Utah shall have filed an unconditional relinquishment of all the lands covered by Utah Segregation List Numbered Two, as well as a proper release of any interest or claim which the State of Utah may have or assert in or to the lands offered in exchange for those herein proposed to be patented."

When the bill embodying the provisions of this act was before the department for a report, it said:

"In view of the decisions in Hibberd *v.* Slack (84 Fed. Rep., 571), State *v.* Whitney et ux. (120 Pac., 116), and Balderston *v.* Brady et al. (107 Pac., 493, and 108 Pac., 742), and Deseret Water & Irrigation Co. (138 Pac., 891), this department is, for the time being, abstaining from action for the approval and certification of all lists of State school land indemnity selections based, as are those here considered, on the exchange provisions of the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276, United States Revised Statutes, the provisions of said act having been made applicable to the State of Utah by the act of May 2, 1902 (32 Stat., 188).

"The object of this is to permit a full and adequate inquiry relative to the state of the law bearing on the validity of such selections, as that law may be established or influenced by the decisions above cited and by the statutory and constitutional provisions in force in the several States by which said selections have been made and upon which these decisions are supposed to rest. It is not by any means certain, however, that anything involved in that inquiry necessarily questions the validity of selections made by Utah. The purpose has been and is rather to ascertain and define what legislation, if any, may be essential or advisable to provide adequate security for the titles secured by the States, by means of these selections, and, also, proper protection for the title of the United States to lands surrendered as bases for these selections."

MINERAL LANDS EXCEPTED FROM THE SCHOOL GRANT.

The pending contention of the State of Utah, as well as that of New Mexico, that coal lands are not excepted from its school grant, constitutes a special feature in the adjustment of the grant to this State. The department has uniformly held, in a long line of decisions, that while the enabling act of the State of Utah did not, in terms contain a reservation from the school grant of mineral lands, yet lands of known mineral character, when the grant took effect did not pass to the State. The State being desirous of a judicial determination of its contention, the department, on April 16, 1915, presented the matter to the Department of Justice, to which the following response was made April 23:

"In reply permit me to suggest that there is no longer any room for argument of the question raised. Mineral lands were not included in the grant to New Mexico either for the support of schools or other purposes, and your department and the courts, including the Supreme Court, have uniformly held that coal is a mineral. Moreover, Congress itself has so decided by enacting special laws for the disposition of coal lands.

"Under these circumstances your department would seem to be entirely justified in continuing to administer the law as it has heretofore done, notwithstanding the attitude of the officials of the States of New Mexico and Utah.

"I do not feel that this department should promise to intervene or interfere in any manner with such suit as might be brought by the State against a patentee, because upon the issue of patent the interest of the United States is at an end, and if the aid of this department could be properly given to support the patent issued in one case, there would seem to be no good reason for refusing to lend that support in any other similar case that might be presented. This, as you know, might lead to the Government's becoming involved in endless litigation.

"If the officials of the State really desire to test the question in the courts and to avoid placing upon its citizens the burden of defending the suit, I believe it can be most readily accomplished by the institution of suit in the District of Columbia to restrain the Secretary of the Interior from issuing a patent under the coal-land laws for lands in a school section found by him to be coal lands. I can readily assure you of the good offices of this department in defense against such a proceeding."

THE STATE OF NEW MEXICO.

The grant of school lands to this State is peculiar in this, that it received a grant of sections 16 and 36 while it was yet a Territory by the act of June 21, 1898 (30 Stat., 484).

Section 1:

"That sections numbered sixteen and thirty-six in every township of the Territory of New Mexico, and where such sections, or any parts thereof, are mineral or have been sold or otherwise disposed of by or under the authority of any act of Congress, other nonmineral lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said Territory in such manner as is hereinafter provided: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants of this act; but such reservations shall be subject to the indemnity provisions of this act."

"SEC. 7. That this act is intended only as a partial grant of the lands to which said Territory may be entitled upon its admission into the Union as a State, reserving the question as to the total amount of lands to be granted to said Territory until the admission of said Territory as a State shall be determined on by Congress.

"SEC. 8. That all grants of land made in quantity or as indemnity by this act shall be selected by the governor of the Territory of New Mexico, the surveyor general of the Territory of New Mexico, and the solicitor general of said Territory, acting as a commission, under the direction of the Secretary of the Interior, from the unappropriated public lands of the United States within the limits of the said Territory of New Mexico."

Section 10 of this act provides that sections 16 and 36, "reserved for public schools," may be leased under such laws and regulations as may be prescribed by the legislature of the Territory, under approval by the Secretary of the Interior.

EXTENSION OF GENERAL ADJUSTMENT ACT TO THE TERRITORY.

Act of March 16, 1908 (35 Stat., 44):

"That all the provisions of an act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes,' be, and the same are hereby made applicable to the Territory of New Mexico, and the grant of school lands to said Territory, and indemnity therefor, shall be administered and adjusted in accord, ance with the provisions of said act, anything in the act of Congress approved June twenty-first, eighteen hundred and ninety-eight, making certain grants of land to the Territory of New Mexico, and for other purposes, to the contrary notwithstanding."

THE ENABLING ACT.

By the act of June 20, 1910 (36 Stat., 567), admitting the Territory to statehood, a grant of school lands was made by section 6:

"SEC. 6. That in addition to sections sixteen and thirty-six, heretofore granted to the Territory of New Mexico, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this act are hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any parts thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made heretofore or hereafter, and before the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein: *Provided, however*, That the area of such indemnity selections on account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships

containing eleven thousand five hundred and twenty acres or more, two sections for such townships containing five thousand seven hundred and sixty acres or more, nor one section for such township containing six hundred and forty acres or more: *And provided further*, That the grants of sections two, sixteen, thirty-two, and thirty-six to said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its common-school fund, such proportion of the gross proceeds of all the national forests within said State as the area of lands hereby granted to said State for school purposes which are situate within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of all the national forests within said State, the area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the Treasury not otherwise appropriated."

Section 10 of the act declares that a disposal of the granted lands for purposes other than those designated shall constitute a breach of trust; provides for sales and leases to the highest bidder, and further:

"Lands east of the line between ranges eighteen and nineteen east of the New Mexico principal meridian shall not be sold for less than $5 per acre, and lands west of said line shall not be sold for less than $3 per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than $25 per acre: *Provided*, That said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such Government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character named and in the manner prescribed in section eleven of this act. * * *

"Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof, or the natural products thereof not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said State to the contrary notwithstanding.

"It shall be the duty of the Attorney General of the United States to prosecute in the name of the United States and its courts such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

"Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this act."

The State was admitted by proclamation, January 6, 1912.

CONSTITUTION AND LAWS OF THE STATE.

The laws of New Mexico are not codified, hence a copy of its constitution is not at hand; nor do the Session Laws of 1912 and 1913 deal with any questions affecting the adjustment of the school grant, except the act of March 13, 1913, (Session Laws, p. 35) which authorizes the commissioner of public lands to employ additional assistance to defend against proceedings brought by the United States, to determine title to school or other State lands.

MINERAL EXCEPTIONS.

[See Utah.]

NOTE.—No tabulated statistics with respect to the grant to this State are called for under this report, for the reason that under the terms of the grant the specified sections within national forests, now existing or proclaimed, are administered as a part of said forests until the forests embracing such sections may be restored to the public domain.

THE STATE OF ARIZONA.

By section 24 of the enabling act of June 20, 1910 (36 Stat., 572), the following grant was made to the State for the benefit of common schools:

"SEC. 24. That in addition to sections sixteen and thirty-six heretofore reserved for the Territory of Arizona, sections two and thirty-two in every township in said proposed State not otherwise appropriated at the date of the passage of this act are hereby granted to the said State for the support of common schools; and where sections two, sixteen, thirty-two, and thirty-six, or any part thereof, are mineral, or have been sold, reserved, or otherwise appropriated or reserved by or under the authority of any act of Congress, or are wanting or fractional in quantity, or where settlement thereon with a view to preemption or homestead, or improvement thereof with a view to desert-land entry has been made the survey thereof in the field, the provisions of sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes, and acts amendatory thereof or supplementary thereto, are hereby made applicable thereto and to the selection of lands in lieu thereof to the same extent as if sections two and thirty-two, as well as sections sixteen and thirty-six, were mentioned therein: *Provided, however*, That the area of such indemnity selections on account of any fractional township shall not in any event exceed an area which, when added to the area of the above-named sections returned by the survey as in place, will equal four sections for fractional townships containing seventeen thousand two hundred and eighty acres or more, three sections for such townships containing eleven thousand five hundred and twenty acres or more, two sections for such townships containing five thousand seven hundred and sixty acres or more, nor one section for such townships containing six hundred and forty acres or more: *And provided further*, That the grants of sections two, sixteen, thirty-two, and thirty-six to said State, within national forests now existing or proclaimed, shall not vest the title to said sections in said State until the part of said national forests embracing any of said sections is restored to the public domain; but said granted sections shall be administered as a part of said forests, and at the close of each fiscal year there shall be paid by the Secretary of the Treasury to the State, as income for its common school fund, such proportion of the gross proceeds of all the national forests within said State as the area of lands hereby granted to said State for school purposes which are situated within said forest reserves, whether surveyed or unsurveyed, and for which no indemnity has been selected, may bear to the total area of said sections when unsurveyed to be determined by the Secretary of the Interior, by protraction or otherwise, the amount necessary for such payments being appropriated and made available annually from any money in the Treasury not otherwise appropriated."

"SEC. 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to the said Territory, are hereby expressly transferred and confirmed to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

"Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for which such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this act, shall be deemed a breach of trust.

"* * * Said lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction to be held at the county seat of the county wherein the land to be affected or the major portion thereof shall lie. * * *

"All lands, leaseholds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained. * * *

"No lands shall be sold for less than $3 per acre, and no lands which are or shall be susceptible of irrigation under any projects now or hereafter completed or adopted by the United States under legislation for the reclamation of lands, or under any other project for the reclamation of lands, shall be sold at less than $25 per acre: *Provided*, That said State, at the request of the Secretary of the Interior, shall from time to time relinquish such of its lands to the United States as at any time are needed for irrigation works in connection with any such Government project. And other lands in lieu thereof are hereby granted to said State, to be selected from lands of the character named and in the manner prescribed in section twenty-four of this act. * * *

"Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof, or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provision of the constitution or laws of the said State to the contrary notwithstanding.

"It shall be the duty of the Attorney General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

"Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this act."

The State was admitted by proclamation February 14, 1912.

STATE CONSTITUTION.

Article 10 of the State constitution provides for an acceptance of the grant of school lands in accordance with the terms affixed thereto. That no lands shall be sold for less than $3 per acre, and no irrigable lands susceptible of irrigation under any United States reclamation project at less than $25 an acre; and provides for the relinquishment of school lands for the benefit of reclamation projects.

STATE LEGISLATION.

By section 4501, Civil Code of 1913, the legislative acceptance of the school grants is given.

Section 4563, et seq., provides for a State land commission.

"4572. The commission is authorized to relinquish lands settled upon within national forests prior to the admission of the State where essential to the protection of just and equitable rights of the settlers."

Section 4597 declares that no lands shall be sold for a less price than is provided by the constitution of the State and by the enabling act.

NOTE.—No tabulated statistics with respect to the grant to this State are called for under this report, for the reason that under the terms of the grant the specified sections within national forests, now existing or proclaimed, are administered as a part of said forests until the forests embracing such sections may be restored to the public domain.

5. PROPOSED LEGISLATION.

(A) AMENDATORY ACT OF 1891.

At different times during the Sixty-second and Sixty-third Congresses bills were introduced intended to authorize an exchange of title as between States and the United States. Attention is especially directed to S. 5068, entitled "An act to authorize the Secretary of the Interior to exchange lands for school sections within an Indian, military, national forest, or other reservation, and for other purposes." Report No. 945, Calendar No. 328, submitted by the Senate Committee on Public Lands on this bill, contains a very full presentation of the causes leading up to the introduction of this bill, in which the decisions of the department on this subject and of the courts, especially that of Hibberd *v.* Slack (84 Fed. Rep., 571), are cited and discussed. It should be noted with respect to these bills that the department took the position that such legislation was not absolutely necessary, but that its enactment would remove all further question as to the validity of exchanges theretofore made under the act of February 28, 1891. Other bills (H. R. 19344 and H. R. 25738) were also introduced in the Sixty-second Congress, both to the same purpose and substantially along the same line as S. 5068, but all equally failed of enactment at the hands of Congress.

In the Sixty-third Congress, House joint resolution 266 was introduced for the purpose of "authorizing and validating certain exchanges of land between the United States and the several States," which in effect was intended to bring about the same result as contemplated in the bills introduced in the prior Congress.

This office submitted a report on said joint resolution (copy herewith), together with a draft of a proposed substitute, which was intended not only to cover the "exchange" question, but also the amendatory effect of the act of 1891 upon grants made prior thereto. Our report did not meet with the approval of the department, but in consideration thereof, and for the purposes of determining in what form, if any, legislative remedies could be applied to the existing conditions, the present call for a report was made by the department.

DEPARTMENT OF THE INTERIOR,
Washington.

Hon. SCOTT FERRIS,
Chairman Committee on Public Lands, House of Representatives.

MY DEAR MR. FERRIS: I am in receipt of a copy of House joint resolution 266, with request for report thereon, with such suggestions and recommendation as I may deem appropriate.

The resolution is for the purpose of "Authorizing and validating certain exchanges of land between the United States and the several States," and is introduced by the following preamble:

"Whereas doubt and uncertainty has arisen concerning the purpose and effect of certain provisions contained in the act of Congress approved February 28, 1891 (26 Stat., 796) authorizing selections by States and Territories of public lands in lieu of lands in sections 16 and 36 within certain reserves: Therefore, etc."

The body of the resolution authorizes the Secretary of the Interior to accept from any State having within its boundaries surveyed or unsurveyed lands included in National reservations, proper and satisfactory transfer of such lands which the State may desire to exchange for other lands within the State, etc.; closing with a proviso that all such exchanges heretofore made and approved by the Secretary of the Interior are ratified and confirmed.

The act of 1891 referred to in the preamble is entitled "An act to amend sections 2275 and 2276 of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated, and for other purposes," and makes provision by a very substantial amendment for an entire scheme of adjusting the grants of sections 16 and 36, made to the several States, as follows:

1. For lands covered by settlement before survey.
2. For mineral lands.
3. Lands included within national reservations, or otherwise disposed of.
4. For sections fractional, or wanting, due to fractional townships.

The department from the beginning construed this amendatory act as general in character, establishing a uniform rule with respect to the adjustment of school-land grants, affording each State an equal right of indemnity, and superseding, so far as in conflict, all other laws bearing upon the same subject. See departmental instructions of April 22, 1891 (12 L. D., 400). This interpretation of the scope of the act has remained unmodified so far as the decisions of the department are concerned. The occasion for the issuance of the instructions above cited, which, as will be observed, was very shortly after the passage of the amendatory act, arose from the necessity of determining the effect of this legislation upon the enabling act of February 22, 1889 (25 Stat., 676), by which provision was made for the admission to the Union of the States of North Dakota, South Dakota, Montana, and Washington, wherein a grant of sections 16 and 36 was made in aid of the public schools, providing indemnity only for lands "sold or otherwise disposed of" at the date of the act, and withdrawing said sections either surveyed or unsurveyed from all disposition.

The act of July 3, 1890 (26 Stat., 215), admitting Idaho to the Union, and providing a school grant, was in the same terms, as well as the later acts of July 10, 1890 (26 Stat., 222), and July 16, 1894 (28 Stat., 107), making grants to the States of Wyoming and Utah, respectively.

But in the case of the State of Washington *v.* Whitney (120 Pac. Rep., p. 116), it was held by the supreme court of that State, January 4, 1912, that the enabling act of February 22, 1889, made a present grant to the State of the specific sections 16 and 36, whether surveyed or unsurveyed, and that the act of 1891 amendatory of sections 2275 and 2276 of the Revised Statutes in no manner operated to repeal or modify the provisions of the grant made to the State in said enabling act.

The department also held, construing said act of 1891 (28 L. D., 57):

"Where a forest reservation includes within its limits a school section surveyed prior to the establishment of the reservation, the State, under the authority of the first proviso to section 2275, Revised Statutes, as amended by the act of February 28, 1891, may be allowed to waive its right to such section and select other lands in lieu thereof."

This decision was a recognition that the amendatory act provided for an "exchange of title" between the State and the United States, as well as indemnity, in case the State had sustained a loss to the sections in place, and was equally applicable to all public-land States. This construction of the law has never been modified by the later departmental decisions, but in the case of Hibberd *v.* Slack (84 Fed. Rep., 571), a contrary view of the several acts was reached, substantially to the effect that the act of 1891 was confined in its operations solely to a provision for "indemnity" in case of loss, and this decision was cited and followed by the Supreme Court of Cali-

fornia January 20, 1914, in the case of Deseret Water, Oil & Irrigation Co. *v.* The State of California (138 Pac. Rep., 981).

It is therefore seen that the departmental construction of the act of 1891 has, by the courts, been called in question in the following particulars:

1. That the amendatory provisions of said act constitute a general scheme for the indemnification of the States as against loss occurring in the granted sections and supersedes all provisions for indemnity in grants of school lands made prior thereto.

2. That the act of 1891 was not only an act providing for indemnification as against loss, but also authorized an "exchange" of title between the State and the United States where the granted sections fell within a national reservation.

While it is true that the decisions of the courts wherein these questions have thus far been considered are not of necessity final or conclusive so far as governing the action of the department is concerned, yet is is deemed inadvisable for the department to further proceed in the adjustment of these school grants in accordance with its former construction of the statutes with the uncertainty that is now attendant upon such action and the possibility of an ultimate reversal of its holding by a final decision in the United States Supreme Court.

In view of this situation, several bills were introduced in the Sixty-second Congress—House bill 19344 and Senate bill 5068—both of which received substantially the approval of the department. Senate Report No. 948 on S. 5068 contains a full recitation of the several decisions of the department and the court, bearing particularly upon the "exchange" feature of the act of 1891 as recognized by the department. The department also has under consideration S. 787, introduced in the present Congress and addressed to the same question.

Referring again to the early holding of the department as to the general scheme for adjustment furnished by the act of 1891 as to all prior grants, it is to be noted that in the subsequent grant to Utah in 1894 the terms of the grant made by the act of 1889 were followed, but Congress later, by the act of May 3, 1902 (32 Stat., 188), extended the benefit of the adjustment act of 1891 to that State, as was also done in the case of New Mexico by act of March 16, 1908 (35 Stat., 44).

This action of Congress may very well be taken as an approval of the departmental application of the general scheme to all prior grants. This can be readily understood when it is remembered how much more generous the provisions in the act of 1891 are in the matter of indemnity than the act of 1889, and the apparent intention of Congress of placing all the States on an equal footing. However this may be, the fact yet remains that the State of Washington, speaking through its supreme court, has held the act of 1891 inapplicable to its school grant and thus rendered its further adjustment in that State a matter of doubtful policy in the absence of further legislation.

In dealing with this question, howevver, the fact should not be overlooked that prior to the decision of the court noted above, the State of Washington had received title to many selections based on the departmental construction of its grant, and has pending selections of a similar character at the present time, as will appear from the tabulated statistics herewith; but if Congress ratifies and confirms selections of such character heretofore made, and in terms extends the provisions of the act of 1891 to the grant made under the act of 1889, then all question as to the applicability of the later act will cease to exist.

Again, the decisions in Hibberd *v.* Slack and in the Deseret case go substantially on the ground that the act of 1891 does not deal with the "exchange" question, but only with indemnity for lands lost in place. Hence if Congress ratifies such exchanges heretofore made and distinctly authorizes similar action hereafter, all objections founded on the Hibberd-Slack doctrine will disappear, so far as want of authority on the part of the department is concerned.

On the other hand, the character of the title received by the United States from the State, either in the matter of indemnity for loss or in exchange of title, will be also put beyond question by the requirement of assent to the provisions of this curative legislation on the part of the State.

The grant of February 22, 1889, fixed the price at which school lands shall be disposed of at not less than $10 per acre. The State of Washington, in its constitution and later by legislation, made due provision for the observance of this condition in the grant, authorizing, however, an exchange of title between the State and United States if the granted lands were included in a national reservation. The position was at one time taken that under such a constitutional provision the legislature would be prohibited from authorizing an exchange of lands between the State and the United States; but in Rogers *v.* Hawley (19 Idaho, 751) it was held by the supreme court of that State that under a similar constitutional limitation an act of the legislature authorizing an exchange between the State and the United States is not obnoxious

to the constitution. A like conclusion was reached by the department in the execution of the act of March 1, 1907 (34 Stat., 1055), authorizing the exchange of certain lands between the State of Wyoming and the United States, it being held that a reconveyance of these lands to the United States is a mere incident to the final adjustment of the grant and did not constitute a sale or disposal of the lands granted within the meaning of the State constitution. It would therefore appear that if Federal legislation of the character contemplated herein is enacted the acceptance thereof by the States will not be prevented by constitutional limitations.

The purposes contemplated by the joint resolution now under consideration meets with the approval of the department; but it is of too general a character to reach all of the difficulties that confront the further adjustment of the school grants, and for that reason a substitute bill is submitted herewith.

In this report reference has been made mainly to conditions developing in the adjustment of the grants in California and in Washington, but the departmental construction of the several grants necessarily operates upon all States having similar grants, and the decisions of the courts take on a significance broader than the territorial limits of the State. To emphasize the importance of the proposed legislation, and the magnitude of the interests involved, I submit the following tabulated statement showing approximately the acreage of selections, approved and pending, made on a basis of an equal acreage of lands in school sections surveyed and unsurveyed within the boundaries of national forests and national parks.

1. Acreage, by States, of approved indemnity school land selections made on basis of surveyed school sections within national forests:

	Acres.
California	68,000
Colorado	475,500
Idaho	000
Montana	7,200
Oregon	106,600
South Dakota	9,000
Utah	16,600
Washington	000
Wyoming	129,000
Total	811,900

2. Acreage, by States, of pending indemnity school land selections made on basis of surveyed school sections within national forests:

	Acres.
California	222,000
Colorado	30,200
Idaho	5,000
Montana	43,100
Oregon	6,300
South Dakota	19,500
Utah	000
Washington	000
Wyoming	57,400
Total	383,500

3. Acreage, by States, of approved indemnity school land selections on basis of unsurveyed school sections within national forests:

	Acres.
California	168,800
Colorado	54,000
Idaho	188,600
Montana	228,400
Oregon	232,000
South Dakota	2,500
Utah	355,000
Washington	104,000
Wyoming	297,000
Total	1,630,300

4. Acreage, by States, of pending indemnity school land selections made on basis of unsurveyed school sections within national forests:

	Acres.
California	42,600
Colorado	2,200
Idaho	493,200
Montana	166,900
Oregon	7,200
South Dakota	8,200
Utah	31,300
Washington	16,500
Wyoming	23,600
Total	791,700

NATIONAL PARKS.

1. Acreage, by States, of approved indemnity school land selections made on basis of surveyed school sections within national parks:

	Acres.
California	31,400
South Dakota	960
Total	32,360

2. Acreage, by States, of approved indemnity school land selections made by States on the basis of unsurveyed school sections in such parks:

	Acres.
California	300
Montana	15,200
Wyoming	77,700
Total	93,200

3. Acreage, by States, of pending indemnity school land selections made on basis of surveyed school sections within such parks:

	Acres.
California	2,600

4. Acreage, by States, of pending indemnity school land selections made on basis of unsurveyed school sections in such parks:

	Acres.
Montana	31,000
Wyoming	1,000
Total	32,000

(Above statement was approximately correct when prepared, early in the spring of 1914. Whatever discrepancies may exist between the figures therein and those prepared recently, after an extended tract book examination, are due mainly to intervening additions to and eliminations from national forests and to new indemnity selections.)

If this measure receives the approval of Congress, all defects in title, now held by the courts to exist, will be cured, and the evident intention of Congress to secure uniformity in the adjustment of school grants will be consummated; I therefore recommend its passage.

Respectfully,

_____.

[House joint resolution 266, Sixty-third Congress, second session.]

REDRAFT.

JOINT RESOLUTION Authorizing and validating certain exchanges of land between the United States and the several States.

Whereas doubt and uncertainty have arisen concerning the purpose and effect of the provisions contained in the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one (Twenty-sixth Statutes at Large, page seven hundred and ninety-six), entitled "An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated, and for other purposes:" Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the provisions of said act are hereby declared applicable to the grant of school lands made by the acts of February twenty-second, eighteen hundred and eighty-nine (Twenty-fifth Statutes at Large, page six hundred and seventy-six), July third, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and fifteen), and July tenth, eighteen hundred and ninety (Twenty-sixth Statutes at Large, page two hundred and twenty-two); and all selections heretofore made and approved under said grant and in accordance with said act, if otherwise lawful, are hereby ratified and confirmed.

SEC. 2. That said act of February twenty-eighth, eighteen hundred and ninety-one, is hereby declared full authority for the exchange of title between the State and the United States where the sections designated in the grant, whether surveyed or unsurveyed, are included within a national reservation or park; and all such exchanges heretofore made and approved, if otherwise lawful, are hereby ratified and confirmed.

SEC. 3. That the provisions of this resolution shall be deemed and held applicable only where the State shall have, by legislative enactment, signified its assent to the terms of said act of eighteen hundred and ninety-one as herein declared.

(B) MINERAL LANDS.

No provision is made by any of the grants of school land to the several States for the issuance of a patent as evidence of title. Under a grant in this form the right of the State to the lands granted is fixed by their identification upon survey. If at such time the land is of known mineral character the title does not pass thereto, although the grant does not in terms except mineral lands.

Great uncertainty, therefore, as to the lands actually granted has often arisen, due to the fact that no formal adjudication of their character has been required in the Interior Department. To give better assurance of title under school grants Senate bill 2911 was introduced in the Sixty-third Congress and was made the subject of a report by the department. (Copy follows:)

DEPARTMENT OF THE INTERIOR,
Washington, August 12, 1914.

Hon. HENRY L. MYERS,
Chairman Committee on Public Lands, United States Senate.

MY DEAR SENATOR: In response to the request of your committee for a report on Senate bill 2911, entitled "A bill further to assure title to lands granted the several States, in place, in aid of public schools," I have to submit the following:

The purpose of this bill is to furnish the various States a record title to the lands in place granted in aid of public schools, and the necessity for such legislation arises from the absence of any statutory provision to this effect under the form in which school land grants have heretofore been made by Congress. These grants are uniformly made by a simple designation of certain sections by number, without provision for the issuance of any evidence of title. Under a grant made in this form the right of the State as to the lands granted is fixed by their identification upon survey and is not dependent upon any specific adjudication by the Interior Department.

A statutory grant of this character calls for no further evidence of title, as the statute in such case is both a grant and a conveyance, so far as the lands are of the character granted and otherwise subject thereto; but it has been held by the Supreme Court of the United States that, although the grant to the public schools is in general terms and without an exception of mineral lands, it does not pass title thereto for the reason that "Congress did not intend to depart from its uniform policy in this respect in the grant of these sections to the State," and that mineral lands are therefore excluded

from the grant. (Consolidated Mining Co. *v.* Consolidated Mining Co., 102 U. S., 175; Deffeback *v.* Hawk, 115 U. S., 392.)

The known condition of the designated section at the date when the grant takes effect determines whether the land does or does not pass thereunder; and if at that time the land is not known to contain mineral, a subsequent discovery thereof will not affect the title to the State. (Deffeback *v.* Hawk, supra; Colorado Coal Co. *v.* United States, 123 U. S., 328; Shaw *v.* Kellogg, 170 U. S., 312.)

It will therefore be seen that in the absence of some provision by which the known condition of the specified sections, at the date when the grant takes effect, can be ascertained and adjudicated, the title of the State must remain doubtful and subject to attack and this bill is intended to provide a remedy for such uncertainty in title. Under its provisions the Secretary of the Interior, on request of the State, will, by appropriate means, ascertain the known character of the land and the date when the grant became effective, and upon the evidence thus obtained determine whether the land does or does not fall within the terms of the grant, and either issue or withhold patent in accordance with such conclusion. A patent issued after such a determination by the Secretary will operate as a conclusive assurance of the title taken by the State under the grant. (Rogers Locomotive Works *v.* American Emigrant Co., 164 U. S., 559.)

The bill as it now stands provides for publication in all cases, preceding final action on the part of the department. In my judgment, such a requirement will, in very many instances, result in useless expense to the State. In States like Alabama and Minnesota, for example, to which the mineral land laws do not apply, as well as in those sections of the public land States where the land is known to be purely agricultural in character, publication will not be needed for the protection of mineral locators. As to claims other than those under the mining laws, this department is without jurisdiction to entertain any except such as may be based upon settlement prior to survey in the field.

With respect to school lands surveyed many years ago, and as to which no settlement has ever been asserted, it may safely be assumed that no such claim exists. It is, therefore, believed to be better to omit the arbitrary requirement of publication in all cases and empower the Secretary of the Interior to make such rules and regulations as will insure protection of bona fide claims to lands in the school sections with the minimum of expense. In view of the wide variance of conditions in the several States, I am strongly of the opinion that the satisfactory and orderly working of the proposed law will largely depend upon the grant to this department of authority to administer it in the light of conditions known to exist in the different States and localities.

The bill as it now stands provides for evidence of title by certification in the event that the State is found entitled to the lands, but it is believed that the ordinary form of conveyance adopted by the Government is preferable, and for that reason, as well as the one hereinbefore cited, the bill has been redrafted. An additional section has been added, authorizing the Secretary of the Interior hereafter to issue patent under State grants, where selections authorized thereby have received departmental approval. This is in line with the general views expressed herein and will furnish the State a much more convenient evidence of title than the certification under the present practice.

With the modification indicated in the redraft submitted herewith, I recommend the enactment of the bill into law.

Respectfully,

A. A. JONES,
First Assistant Secretary.

[S. 2911, Sixty-third Congress, first session.]

REDRAFT.

A BILL Further to assure title to lands granted the several States, in place, in aid of public schools.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where a grant of lands in place has heretofore been made, or may hereafter be made, to any State in aid of public schools, the governor of any such State may cause to be listed with the Secretary of the Interior any sections or parts of sections as designated in the grant, and it shall be the duty of the Secretary of the Interior to issue a patent to the State in further assurance of title, of all tracts thus listed, and found to be of the character granted, and free from valid, adverse claims at the time when the rights of the State attach: *Provided*, That nothing herein con-

tained shall be so construed as to postpone the time of the attachment of the grant of such lands under existing law.

SEC. 2. Hereafter, on approval by the Secretary of the Interior of selections made by any State under grants made by Congress, he shall direct the issuance of patent for the lands so selected and approved.

SEC. 3. The Secretary of the Interior is hereby authorized and empowered to make such rules and regulations as may be necessary to carry into effect the provisions of this act and to afford to any adverse claimant of lands listed by the State an opportunity to be heard in defense of his claim.

6. TABULATED STATEMENT.

NOTE.—It has been found impracticable in a report of this character, to furnish actual dates when forest reservations or withdrawals were made, because of the numerous changes which have been made in the names and boundaries thereof.

Forest reserves were authorized by the act of March 3, 1891, and the date of withdrawal or reservation of any particular tract of land is readily ascertainable.

Reference is made to the report of the Commissioner of Indian Affairs for the year 1908, pages 149 to 164, for a schedule showing each Indian reservation, under what agency or school, tribes occupying or belonging to it, area not allotted or specially reserved, and authority for its establishment.

THE STATE OF CALIFORNIA.

[Enabling act of Mar. 3, 1853 (10 Stat., 244).]

Area of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Angeles	44,725.14	480.00	34,536.11	10,669.03
Crater	3,017.84	.....	1,843.23	1,174.61
Cleveland	31,099.65	2,240.00	16,599.24	16,740.41
Eldorado	39,977.43	1,920.00	15,967.07	25,930.36
Inyo	32,683.36	33,320.00	43,040.30	22,963.06
Kern	21,407.19	14,520.00	30,278.08	5,649.11
Klamath	90,471.23	1,280.00	67,437.62	24,313.61
Lassen	60,849.18	3,200.00	26,558.14	37,491.04
Modoc	74,193.62	3,360.00	20,549.82	57,003.80
Mono	30,865.23	7,520.00	21,910.12	16,475.11
Monterey	23,660.77	1,120.00	10,916.86	13,863.91
Plumas	64,416.14	8,320.00	32,716.72	40,019.42
Santa Barbara	77,145.55	5,920.00	41,459.83	41,605.72
Sequoia	30,491.58	9,280.00	21,421.57	18,350.01
Shasta	73,815.84	4,960.00	35,073.43	43,702.41
Sierra	41,409.83	19,840.00	38,841.01	22,408.82
Siskiyou	20,045.27	1,587.84	9,220.03	12,413.08
Stanislaus	39,523.87	15,720.00	25,945.30	29,298.49
Tahoe	57,715.79	1,600.00	37,055.23	22,260.56
Trinity	89,187.55	3,040.00	40,934.03	51,293.52
Totals	946,702.06	139,227.84	572,303.82	513,626.08

Data were secured in 1912 showing sales by the State of school lands in place. The acreage of such sales within the boundaries of national forests and national parks is as follows:

	Acres.
In national forests	424,000.45
In national parks	466.98
Total	424,467.43

Areas of school sections in national parks and Indian reservations.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
National parks:	*Acres.*	*Acres.*	*Acres.*	*Acres.*
California	54,051.41	1,600.00	12,560.54	43,090.87
Sequoia	8,960.00	.....	7,636.12	1,323.88
Yosemite	31,184.20	7,680.00	32,370.67	6,493.53
Indian reservations:				
Colorado	1,895.06	.....	969.26	925.80
Hupa Valley	4,904.01	.....	4,693.70	210.31
Mission	3,680.00	.....	1,920.00	1,760.00
Tule River	1,920.00	.....	1,920.00	.....
Yuma	1,708.26	.....	1,588.26	120.00
Round Valley	2,407.46	.....	1,280.00	1,127.46

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal or other minerals.

Reclamation, first form	69,281.84
Reclamation, second form	15,792.80
Coal	2,440.00
Potash	5,200.00
Power	5,521.83
Petroleum	60,997.79
Naval reserve	3,252.39
Bird reserves	1,600.00

Acreage of pending school land indemnity selections within the boundaries of various withdrawn areas, or classified as valuable for minerals.

National forests	71,666.35
Power-site reserves	7,030.84
Petroleum	12,563.56
Coal	1,920.64
Reclamation, first form	2,146.05
Water reserves	2,049.69
Bird reserves	80.00

THE STATE OF OREGON.

[Enabling act of Feb. 14, 1859 (11 Stat., 383).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Cascade	18,112.00	50,240.00	55,390.72	12,961.28
Crater	20,160.00	10,560.00	14,071.80	16,648.20
Deschutes	37,136.04	8,640.00	14,404.72	31,371.32
Fremont	16,000.00	5,120.00	9,720.00	11,400.00
Malheur	53,720.00	3,840.00	9,520.00	48,040.00
Minam	18,880.00	5,120.00	19,080.00	4,920.00
Ochoco	31,360.00	2,560.00	4,720.00	29,200.00
Oregon	32,156.70	31,680.00	41,720.00	22,116.70
Paulina	31,920.00	12,800.00	16,300.00	28,420.00
Santiam	19,200.00	14,080.00	21,684.21	11,595.79
Siskiyou	14,012.28	44,720.00	43,571.59	15,160.69
Siuslaw	30,547.74	640.00	9,800.00	21,387.74
Umatilla	16,640.00	.....	1,360.00	15,280.00
Umpqua	17,280.00	37,120.00	37,520.00	16,880.00
Wallowa	30,195.60	26,560.00	36,331.54	20,424.06
Wenaha	15,772.95	7,255.88	15,661.56	7,367.27
Whitman	30,320.00	5,760.00	26,474.00	9,606.00
Total	433,413.31	266,695.88	377,330.14	322,779.05

Areas of school sections in national parks and Indian reservations.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
National parks:	*Acres.*	*Acres.*	*Acres.*	*Acres.*
Oregon Caves	.....	640.00	640.00	.....
Crater Lake Park	.....	7,680.00	7,680.00	.....
Indian reservations:				
Klamath	73,073.74	.....	73,073.74	.....
Warm Springs	13,520.00	12,800.00	24,400.00	1,920.00
Umatilla	17,746.79	.....	17,746.79	.....

Acreage of school sections or parts thereof within other withdrawals or reserves.

Reclamation, first form	46,679.83
Reclamation, second form	640.00
Power	40.00
Bird reserves	698.82

No school-land indemnity selections are found to be pending within areas withdrawn from entry or classified as valuable for coal or other minerals.

THE STATE OF COLORADO.

[Enabling act of Mar. 3, 1875 (18 Stat., 474).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Pike	72,000.00	.....	59,840.00	12,160.00
Leadville	64,480.00	.....	63,920.00	560.00
Rio Grande	60,400.00	1,920.00	55,440.00	6,880.00
San Juan	54,580.00	4,480.00	54,920.00	4,120.00
Routt	51,360.00	.....	45,680.00	5,680.00
Cachetopa	44,800.00	.....	43,160.00	1,640.00
Montezuma	37,760.00	.....	25,040.00	11,720.00
Arapahoe	36,160.00	.....	30,880.00	5,280.00
San Isabell	33,600.00	1,920.00	31,240.00	4,280.00
Colorado	32,000.00	.....	25,640.00	6,360.00
Durango	28,880.00	.....	20,920.00	7,880.00
Holy Cross	26,560.00	.....	24,840.00	1,720.00
Gunnison	23,040.00	.....	22,800.00	240.00
Sopris	23,040.00	.....	22,480.00	560.00
Uncompahgre	9,600.00	1,280.00	8,600.00	2,280.00
Hayden	5,280.00	.....	5,280.00	.....
White River	4,160.00	.....	4,160.00	.....
Total	607,600.00	9,600.00	545,840.00	71,360.00

Above statement embraces no portion of the ceded Ute Indian lands, which were opened to disposition under the acts of June 15, 1880, and February 20, 1895.

Acreage of school sections or parts thereof within national parks, and Indian reservations, also within ceded Ute Indian lands.

Rocky Mountain National Park (created by the act of Jan. 26, 1915):	
Surveyed	14,320
Used as base	13,920
Not offered as base	400
Total	14,320
Mesa Verde National Park (created by the act of June 29, 1906):	
Surveyed (all used as base)	2,080

Southern Ute Indian Reservation:

Surveyed	21,120
Used as base	13,680
Not offered as base	7,440
Total	21,120

Ute Indian Reservation lands opened to disposition under the acts of June 15, 1880 (21 Stat., 199), and Feb. 20, 1895 (28 Stat., 677).

Surveyed	615,360
Unsurveyed	51,840
Total	667,200
Used as base	643,680
Not offered as base	23,520
Total	667,200

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal.

Reclamation (first form)	3,320
Coal	254,960
Power	800

No pending selections have been found embracing lands reserved, withdrawn, or classified as valuable for minerals.

THE STATE OF WASHINGTON.

[Enabling act of Feb. 22, 1889 (25 Stat., 676).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Columbia	17,339.73	35,520.00	5,120.00	47,739.73
Rainier	19,187.69	72,343.88	31,496.86	60,034.71
Washington	9,958.19	82,657.50	24,026.56	68,589.13
Snoqualmie	16,063.98	47,480.00	3,200.51	60,343.47
Wenatchee	37,992.54	45,822.00	13,033.40	70,781.14
Chelan	9,726.80	105,760.00	10,507.07	104,979.73
Colville	4,885.81	22,720.00	.....	44,605.81
Kaniksu	10,665.36	10,240.00	1,240.00	19,665.36
Wenaha	3,157.72	12,160.00	.....	15,317.72
Olympic	12,734.25	39,800.00	4,152.90	48,381.55
Total	158,712.07	474,503.78	92,777.20	540,438.25

Acreage of school sections or parts thereof within national parks and military reserves.

Mount Rainier National Park (created by act of Mar. 2, 1899):

Surveyed	5,120.00
Unsurveyed	5,760.00
Total	10,880.00
Used as base	8,839.66
Not offered as base	2,040.34
Total	10,880.00

Mount Olympus National Park (created by proclamation of Mar. 2, 1909):	
Surveyed	1,208.17
Unsurveyed	32,320.00
Total	33,528.17
Used as base	15,811.27
Not offered as base	17,716.90
Total	33,528.17
Colville Indian Reservation:	
Surveyed	75,981.66
Used as base	30,364.55
Not offered as base	45,617.11
Total	75,981.66
Yakima Indian Reservation:	
Surveyed	67,659.88
Used as base	21,418.51
Not used as base	46,241.37
Total	67,659.88
Spokane Indian Reservation:	
Surveyed (none used as base)	6,512.51
Queniult Indian Reservation:	
Surveyed (none used as base)	9,842.09

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal.

Reclamation, first form	67,083.75
Reclamation, second form	4,547.19
Military reserves	73.50
Bird reserves	280.00
Coal	28,632.17
Power	3,981.30

It is also found that there are 3,772.90 acres of pending school-land indemnity selections within areas withdrawn or classified as coal lands, 160 acres of such selections within national forests, and 160 acres of selections within power-site reserves. No pending selections have been found embracing lands otherwise withdrawn.

THE STATE OF MONTANA.

[Enabling act of Feb. 22, 1889 (25 Stat., 676).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Beaverhead	5,120.00	70,940.00	63,002.97	13,067.03
Bitter Root	16,800.51	44,040.00	46,060.84	14,789.67
Blackfeet	17,370.75	39,680.00	3,756.06	53,294.69
Absaroka	13,433.28	38,400.00	43,578.54	8,254.74
Beartooth	4,040.48	38,071.52	39,832.42	2,279.58
Cabinet	26,495.33	36,017.82	440.00	62,073.15
Custer	19,894.60	5,120.00	18,536.01	6,479.59
Deer Lodge	19,723.62	33,280.00	43,613.04	9,390.58
Flathead	16,968.85	100,494.08	34,183.62	83,279.31
Gallatin	18,743.83	26,080.00	37,774.81	7,049.02
Helena	22,153.31	30,720.00	47,475.31	5,398.00
Jefferson	29,509.93	37,280.00	53,993.77	12,796.16
Kootenai	29,489.83	60,800.00	780.83	89,509.00
Lolo	33,383.62	36,120.00	11,565.30	57,938.32
Madison	9,093.28	51,200.00	42,964.42	17,328.86
Missoula	28,423.87	45,760.00	30,699.29	43,484.58
Sioux	1,840.00	2,560.00	3,661.82	738.18
Lewis and Clark	.....	49,600.00	47,642.59	1,957.41
Total	312,485.09	746,163.42	569,546.64	489,107.87

Acreage of school sections or parts thereof within national parks, Indian reservations, and military reserves.

Yellowstone National Park (created by act of Mar. 1, 1872):	
Unsurveyed	7,866.00
Used as base	4,967.00
Not offered as base	2,899.00
Total	7,866.00
Glacier National Park (created by act of May 11, 1910):	
Surveyed	3,472.48
Unsurveyed	51,628.47
Total	55,100.95
Used as base	46,375.93
Not offered as base	8,725.02
Total	55,100.95
Blackfeet Indian Reservation:	
Surveyed	83,999.05
Used as base	79,382.08
Not offered as base	4,616.97
Total	83,999.05
Crow Indian Reservation:	
Surveyed	105,407.95
Unsurveyed	24,960.00
Total	130,367.95
Used as base	84,080.98
Not offered as base	46,286.97
Total	130,367.95
Fort Belknap Indian Reservation:	
Surveyed	1,722.61
Unsurveyed	24,426.65
Total	26,149.26
Not offered as base	26,149.26
Fort Peck Indian Reservation (opened to entry by proclamation of July 25 1913, 42 L. D., 264, pursuant to the act of May 30, 1908, 35 Stat., 558):	
Surveyed and now available as base	1,886.01
Used as base for pending selections	1,862.08
Not offered as base	23.93
Total	1,886.01
Fort Keogh Military Reserve (created by Executive orders of Mar. 14, 1878, and Jan. 22, 1909):	
Surveyed (none used or offered as base)	4,327.17

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal or other minerals.

Reclamation, first form	27,486.92
Reclamation, second form	39,021.82
Coal	1,097,357.48
Phosphate	7,880.00
Power	5,636.31
Water	200.00

It is also found that there are 94,197.29 acres of pending school land indemnity selections within areas withdrawn or classified as coal lands. No pending selections have been found embracing lands otherwise withdrawn.

THE STATE OF SOUTH DAKOTA.

[Enabling act of Feb. 22, 1889 (25 Stat., 767).]

Acreage of school sections or parts thereof within national forests, national parks, and Indian reservations.

Black Hills National Forest:	
Surveyed	33,744.77
Unsurveyed	26,640.21
Total	60,384.98
Used as base	36,904.98
Not offered as base	23,480.00
Total	60,000.98
Sioux National Forest:	
Surveyed	4,120.00
Used as base	3,320.00
Not offered as base	800.00
Total	4,120.00
Wind Cave National Park:	
Surveyed (all used as base)	960.00
Crow Creek Indian Reservation:	
Surveyed (all used as base)	17,635.25
Lower Brule Indian Reservation:	
Surveyed (all used as base)	11,480.00
Rosebud Indian Reservation:	
Surveyed	48,280.72
Used as base	24,103.75
Not offered as base	24,176.97
Total	48,280.72
Pine Ridge Indian Reservation:	
Surveyed	137,323.86
Used as base	134,716.08
Not offered as base	2,607.78
Total	137,323.86

Cheyenne River Indian Reservation:	
Surveyed	62,798.99
Used as base	34,057.36
Not offered as base	28,741.63
Total	62,798.99
Standing Rock Indian Reservation:	
Surveyed	40,080.35
Used as base	12,018.53
Not offered as base	28,061.82
Total	40,080.35

Acreage of school sections or parts thereof within other withdrawals or reserves or classified as valuable for coal.

Reclamation, first form	9,600
Coal	14,780
Bird reserves	640

It is also found that there are 29,607.86 acres of pending school land indemnity selections within national forests and 11,239.08 acres of selections within areas withdrawn or classified as coal lands. No pending selections have been found embracing lands otherwise withdrawn.

The selections reported as pending within national forests were made in lieu of school sections within national forests, under authority of the President's proclamation of February 15, 1912 (37 Stat., 1729).

THE STATE OF NORTH DAKOTA.

[Enabling act of Feb. 22, 1889 (25 Stat., 676).]

Acreage of school sections or parts thereof within national forests and Indian reservations.

Turtle Mountain Indian Reservation:	
Surveyed (all used as base)	2,560.00
Standing Rock Indian Reservation (opened to entry under act of Feb. 14, 1913; 37 Stat., 675, on May 19, 1915):	
Surveyed (none used or offered as base)	31,075.33
Dakota National Forest:	
Surveyed (none used as base)	640.00
Fort Berthold Indian Reservation (diminished):	
Surveyed (none used or offered as base)	23,709.22

The school lands formerly in said Fort Berthold Indian Reservation, and within the portion opened to entry on May 4, 1912, under act of June 1, 1910 (36 Stat., 455), are as follows:

Surveyed	31,419.94
Offered as base	19,180.92
Not offered as base	12,239.02
Total	31,419.94

Nine thousand nine hundred and sixty acres of these school sections, or parts thereof, have been allotted to Indians, and 14,318.72 acres are found to have been classified as coal lands at fixed prices.

Acreage of school sections or parts thereof within other withdrawals or reserves or classified as valuable for coal.

Coal	978,629.82

There are found to be 280 acres of pending school-land indemnity selections within areas withdrawn or classified as coal land, but no pending selections have been found embracing lands otherwise withdrawn.

THE STATE OF IDAHO.

[Enabling act of July 3, 1890 (26 Stat., 215).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Boise	28,848.97	31,360.00	49,495.83	10,713.14
Cache		13,760.00	12,134.83	1,625.17
Caribou	3,840.00	28,800.00	20,024.36	12,615.64
Challis	4,480.00	67,840.00	66,810.03	5,509.97
Clearwater	8,960.00	35,840.00	22,446.53	22,353.47
Coeur d'Alene	33,392.77	7,040.00	24,052.28	16,380.49
Idaho	10,880.00	56,000.00	54,489.80	12,390.20
Kaniksu	25,391.23	1,920.00	9,760.00	17,551.23
Lemhi	640.00	63,760.00	58,795.71	5,604.29
Minidoka	8,960.00	19,600.00	11,335.20	17,224.80
Nez Perce	15,035.92	78,880.00	87,714.93	6,200.99
Palisade	7,668.80	7,680.00	14,537.71	811.09
Payette	23,923.03	21,494.80	28,649.29	16,768.54
Pend Oreille	33,799.01	14,080.00	28,301.93	19,577.08
Pocatello	11,192.50	3,200.00	4,240.00	10,152.50
St. Joe	28,171.53	25,840.00	23,726.31	30,285.22
Salmon	4,870.23	92,920.00	50,601.48	47,188.75
Sawtooth	7,680.00	59,840.00	51,176.81	16,343.19
Selway		99,200.00	88,950.13	10,249.87
Targhee	17,767.88	23,260.00	22,985.59	18,042.29
Weiser	23,680.00	7,680.00	5,760.00	25,600.00
Total	299,181.87	759,994.80	735,988.75	323,187.92

Acreage of school sections, or parts thereof, within national parks and Indian reservations.

Yellowstone National Park (created by act of Mar. 1, 1872):	
Unsurveyed (all used as base)	1,600.00
Fort Hall Indian Reservation:	
Surveyed	32,083.22
Used as base	935.05
Not offered as base	31,148.17
Total	32,083.22
Duck Valley Indian Reservation:	
Surveyed	1,280.00
Unsurveyed	2,560.00
Total	3,840.00
Used as base	3,200.00
Not offered as base	640.00
Total	3,840.00

Acreage of school sections, or parts thereof, within other withdrawals or reserves, or classified as valuable for coal.

Reclamation, first form	28,995.17
Reclamation, second form	18,680.00
Coal	18,760.00
Phosphate	51,207.92
Power	2,330.26
Water	640.00
Bird reserves	2,382.97

Acreage of pending school land indemnity selections within the boundaries of various withdrawn areas, or classified as valuable for coal or phosphate.

National forests	231,012.45
Power-site reserves	1,034.08
Phosphate	128,554.79
Coal	7,223.84

Practically all the selections reported as within national forests were made in lieu of unsurveyed school sections within national forests, under authority of the President's proclamations of June 4, 1912 (37 Stat., 1743), and March 3, 1913 (37 Stat., 1777).

THE STATE OF WYOMING.

[Enabling act of July 10, 1890 (26 Stat., 222).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Big Horn	48,000	14,400	59,680	2,720
Medicine Bow	27,040	.....	24,520	2,520
Shoshone	15,465	89,600	100,800	4,265
Teton	23,360	64,000	85,800	1,560
Wyoming	22,720	32,000	50,920	3,800
Bridger	8,960	13,440	22,200	200
Bonneville	18,820	25,200	53,240	780
Washakie	14,720	.....	13,280	1,440
Hayden	21,440	.....	11,480	9,960
Sundance	10,330	.....	7,180	3,150
Palisade	.....	11,520	11,200	320
Targhee	.....	2,560	2,160	400
Caribou	360	.....	360	.....
Black Hills	640	.....	600	40
Total	211,850	262,720	443,420	31,150

Acreage of school sections or parts thereof within national parks, Indian reservations, and military reserves.

Yellowstone National Park (created by act of Mar. 1, 1872):	
Unsurveyed	104,640
Used as base	103,680
Not offered as base	960
Total	104,640
Shoshone Indian Reservation:	
Surveyed	28,160
Unsurveyed	16,640
Total	44,800
Used as base	44,480
Not offered as base	320
Total	44,800
Fort D. A. Russell Target and Maneuver Reserve (created by Executive orders of Oct. 9, 1903, and Apr. 19, 1910):	
Surveyed (all used as base)	2,560

Acreage of school sections or parts thereof within other withdrawals or reserves, or classified as valuable for coal or phosphate.

Petroleum	11,320
Reclamation, first form	17,840
Reclamation, second form	15,600
Coal	656,280
Phosphate	11,320
Power	80

It is also found that there are 11,120 acres of pending school land indemnity selections within areas withdrawn or classified as coal lands, 480 acres of such selections within areas withdrawn or classified as phosphate lands, and 5,080 acres of selections within water reserves. No pending selections have been found embracing lands otherwise withdrawn.

THE STATE OF UTAH.

[Enabling act of July 16, 1894 (28 Stat., 107).]

Areas of school sections within national forests.

Forests.	Surveyed.	Unsurveyed.	Used as base for selections.	Not offered as base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
Powell	5,761.92	76,060.00	69,364.02	12,477.90
LaSalle	7,151.61	49,120.00	32,040.00	24,231.61
Nebo	9,383.16	8,520.00	7,640.00	10,263.16
Fishlake	46,709.23	26,720.00	20,147.55	53,281.75
Manti	28,840.79	53,280.00	50,865.70	31,255.09
Wasatch	4,464.47	24,300.00	20,880.00	7,884.47
Fillmore	56,772.95	21,440.00	15,440.00	62,772.95
Sevier	40,622.38	44,194.00	48,857.28	35,959.10
Dixie	17,780.95	30,180.00	22,639.68	25,321.27
Cache	22,247.08	11,800.00	13,440.00	20,607.08
Minidoka	8,336.42	1,280.00	1,040.00	8,576.42
Pocatello	2,077.13	.....	80.00	1,997.13
Uintah (former Uintah Indian Reservation)	73,982.56	.....	62,249.05	11,733.50
Uintah (outside former Uintah Indian Reservation)	36,692.68	45,266.12	50,494.05	31,464.76
Ashley (former Uintah Indian Reservation)	34,691.41	.....	33,036.24	1,655.07
Ashley (outside former Uintah Indian Reservation)	9,982.00	57,941.36	51,438.61	16,484.75
Total	405,496.64	450,101.48	499,652.18	355,966.01

Acreage of school sections or parts thereof (in addition to such lands now within national forests) which were embraced in the former Uintah Indian Reservation.

[Opened to entry by acts of May 27, 1902, 32 Stat., 245; and Mar. 3, 1905, 33 Stat., 1048–1069.]

Surveyed	164,735.59
Used as base	150,819.91
Not offered as base	13,915.68
Total	164,735.59

Reference is hereby made to the Secretary's decision of June 13, 1905 (33 L. D., 610), which held as follows:

"In regard to the grant in place, which grant was made by the act of July 16, 1894 (28 Stat., 107), of sections 2, 16, 32, and 36, in each township in said State, it is the opinion of the department that not only technical rules of statutory construction, but also the general scope of legislation bearing upon the disposal to be made of the unallotted portion of this reservation, and the policy of the United States in respect to public schools and also to Indians, call for the denial of any claim on the part of the State to any portion of its school grant in place within the limits of this reservation. Further, that the reasons controlling the decision just arrived at prevent the recognition of any claimed right on the part of the State to select indemnity from the surplus lands of this reservation in further satisfaction of the school grant, prior

to the opening thereof, under the provisions of the act of March 2, 1895 (28 Stat., 876, 899), or at all. (See Minnesota *v.* Hitchcock, 185 U. S., 373.)

The State acquiesced in this holding, and has tendered selections in lieu of the greater portion of the lands in designated school sections within the boundaries of said former reservation.

Acreage of school sections or parts thereof within national parks, bird reserves, and Indian reservations.

Mukumtweap National Park:	
Unsurveyed (none used as base)	640.00
Strawberry Valley Bird Reserve:	
Unsurveyed (none used as base)	840.00
Navajo Indian Reservation:	
Surveyed	9,132.41
Unsurveyed	61,898.94
Total	71,031.35
Not offered as base	71,031.35
Kaibab and Piute Indian Reservation:	
Unsurveyed (none used as base)	60,640.00
Shebit Indian Reservation:	
Unsurveyed (none used as base)	2,560.00
Utah Indian Reservation:	
Surveyed	1,920.00
Unsurveyed	1,280.00
Total	3,200.00
Not offered as base	3,200.00

Acreage of schools sections or parts thereof within other withdrawals or reserves or classified as valuable for coal or phosphate.

Reclamation, first form	123,827.72
Reclamation, second form	2,810.00
Coal	753,842.82
Phosphate	3,584.03
Power	6,600.00
Petroleum	202,511.90

Acreage of pending school-land indemnity selections within the boundaries of various withdrawn areas or those classified as valuable for coal or other minerals.

Coal	16,527.64
Phosphate	280.00
Power sites	738.21
Water reserves	674.60
Petroleum	678.22
Military reserves	681.22
Reclamation (first form)	1,096.57
National forests	643.73

School sections within national forests.

	Surveyed.	Unsurveyed.	Used as base.	Not offered.
	Acres.	*Acres.*	*Acres.*	*Acres.*
California	946,702.06	139,227.84	572,303.82	513,626.08
Oregon	433,413.31	266,695.88	377,330.14	322,779.05
Colorado	607,600.00	9,600.00	545,840.00	71,360.00
Washington	158,712.07	474,503.78	92,777.20	540,438.25
Montana	312,485.09	746,163.42	569,546.64	489,107.87
South Dakota	37,864.77	26,640.21	40,224.98	24,280.00
North Dakota	640.00	.....	.....	640.00
Idaho	299,181.87	759,994.80	735,988.75	323,187.92
Wyoming	211,850.00	272,720.00	443,420.00	31,150.00
Utah	405,496.64	450,101.48	499,652.18	355,966.01
Total	3,413,945.81	3,135,647.41	3,877,083.71	2,672,535.18

SUMMARY.

	Acres.
Surveyed	3,413,945.81
Unsurveyed	3,135,647.41
Total	6,549,593.22

Tabulation of the statement prepared in the spring of 1914, showing selections made in lieu of school sections within national forests; also showing new selections filed since such original statement was compiled.

	Approved surveyed base.	Approved unsurveyed base.	Pending surveyed base.	Pending unsurveyed base.
	Acres.	*Acres.*	*Acres.*	*Acres.*
California	68,000.00	168,800.00	222,000.00	42,600.00
Colorado	475,500.00	54,000.00	30,200.00	2,200.00
Idaho	.....	188,600.00	5,000.00	493,200.00
Montana	7,200.00	228,400.00	43,100.00	166,900.00
Oregon	106,600.00	232,000.00	6,300.00	7,200.00
South Dakota	9,000.00	2,500.00	19,500.00	8,200.00
Utah	16,600.00	355,000.00	.....	31,300.00
Washington	.....	104,000.00	.....	16,500.00
Wyoming	129,000.00	297,000.00	57,400.00	23,600.00
Total	811,900.00	1,630,300.00	383,500.00	791,700.00
Montana (new)	.....	.....	4,285.35	112,883.30
Idaho (new)	.....	.....	12,835.32	24,451.06
Total to April, 1915	811,900.00	1,630,300.00	400,620.67	929,034.36

SUMMARY.

	Acres.	*Acres.*
Approved:		
Surveyed	811,900.00	
Unsurveyed	1,630,300.00	
		2,442,200.00
Pending:		
Surveyed	400,620.67	
Unsurveyed	929,034.36	
		1,329,655.03
Total		3,771,855.03

In explanation of apparent discrepancies in the foregoing tabulated statements, it should be kept in mind that many school sections or parts thereof now within national forests have been heretofore used as base for indemnity selections and the cause of loss designated in approved lists as "settlements" mineral or other cause. For example, further research discloses that in Utah 75,480 acres of selections have heretofore been approved on basis of lands designated in the clear lists as Uintah Indian Reservation lands, whereas same have since the opening of such reservation been included in national forests.

CONCLUSION.

It should be said, in conclusion, that in the compilation of the decisions of the courts and the department, such selections only have been made as serve to show the present interpretation of the school grant, without undue citations from the abundance of authority found in the books; and that in the presentation of special features involved in the several grants, every effort has been made to secure such information as will be helpful to the department.

Respectfully,

CLAY TALLMAN, *Commissioner.*

JULY 27, 1915.

The CHAIRMAN. We will first hear Mr. Kingsbury.

STATEMENT OF MR. W. S. KINGSBURY, SURVEYOR GENERAL OF CALIFORNIA.

The CHAIRMAN. Mr. Kingsbury, will you please give the reporter your name and state what position you hold in the State of California.

Mr. KINGSBURY. My name is W. S. Kingsbury. I am the surveyor general of California.

Mr. Chairman, in 1853 the Congress of the United States granted the State of California the sixteenth and thirty-sixth sections of each township, and also the lieu land, if for any reason the sixteenth and thirty-sixth sections were embraced in homestead or desert entries or had been withdrawn for public purposes.

That bill was enlarged by the act of 1891, which provided that where the lands were mineral lands, or where they were embraced in forest reserves, or Indian reservations, or military reservations, lieu lands of like area were granted to the State.

In 1903 the question arose as to the right of the State to have the listing proceeded with, on the ground that where the lands were grants by townships, in some instances, the State had received more land than it was entitled to. In other words, if the sixteenth section was lost to the State, or in case where the township was a fractional part, where we obtained more land than we were entitled to put into a particular township, the department held that until we returned that no further listing should be proceeded with.

Legislation was passed by the State legislature providing for this adjustment, and the attorney general of the State and myself came on here and we reached an agreement with the department to the effect that as soon as the State settled with the department they would proceed with the listing.

There were about 12,000 acres which had been certified since 1877, and about 18,000 acres prior to 1877.

Mr. LENROOT. Do you mean altogether, or erroneously certified?

Mr. KINGSBURY. Erroneously certified.

Mr. TAYLOR. You mean you had that much more land than you had a right to have?

Mr. KINGSBURY. In particular townships; the State was entitled altogether to 450,000 acres, and that many were erroneously certified to the State.

In 1908 the department said they would proceed with the listing of land as soon as a patent was granted to the United States. In 1909 we presented a patent for 12,000 acres, but in the meantime, in checking up this grant it was determined that there were other over-

certifications. In 1909 they said they would proceed with the listing, withholding from certification a sufficient amount to protect the interests of the United States.

So they proceeded with the listing of the land for a short time, and then the department found it would be advisable to examine the selected land to see whether it contained any mineral land.

So an appropriation was made, secured through the efforts of the State, for an examination of the land. They listed about 30,000 or 40,000 acres.

In 1911 when Mr. Fisher came in as Secretary of the Interior he thought that the United States had not any right to hold up any particular selections, and that no further listings would be made until the entire question as to the overcertifications was adjusted.

In the agreement reached in June, 1911, it was provided that the land office would immediately proceed with the listing of selections as soon as the legislatures of the State of California passed an act providing for the adjustment. In the year 1910 there was a special session of the legislature, and that legislation was passed, and the department proceeded with the listing of the land.

Some people in California claimed some of the land that the State had offered to the United States in exchange, and protested to the department.

The CHAIRMAN. You mean settlers?

Mr. KINGSBURY. In several cases.

The CHAIRMAN. Through purchase?

Mr. KINGSBURY. No; they made application to the State for the land, claiming the land had not been offered to the United States, and in 1911 we came on here and argued against that protest.

The CHAIRMAN. I have a letter here from the department which says they were purchased from the State.

Mr. KINGSBURY. Whose letter is that?

The CHAIRMAN. That is Secretary Lane's letter.

Mr. GILLETT. I think he means a different class of land. He means those parties who applied to the State under State laws.

The CHAIRMAN. The letter seems to say there are about 7,000 acres that were sold in that way.

You are dealing with the proviso in section 3?

Mr. KINGSBURY. I was referring to the claims for the land which the State had offered to the United States. The people protested against the listing of the lieu lands, because they claimed those lands were not the lands which the State had offered to the United States in exchange. We came here on the 1st of July in 1912 to argue the matter in regard to the protest, and it was taken under advisement.

Mr. TAYLOR. By whom?

Mr. KINGSBURY. By the Secretary of the Interior. Nothing further was done until we had a report from the Commissioner of the General Land Office to the Secretary of the Interior calling attention to the question in regard to the right of the State to make these exchanges, and it was suggested that no further listings should be made until there was some remedial legislation passed, or until there was a decision of the Supreme Court in regard to the matter.

Last October we came on and asked the Secretary of the Interior if he would assist us in the matter of remedial legislation, so that the suspension of the lieu-land grants could be removed and the

listing proceeded with, and he said they would present legislation to remove the suspension.

In this bill it is provided "and all selections heretofore made"——

The CHAIRMAN. Where are you reading from?

Mr. KINGSBURY. I am reading from section 1, page 2, line 8.

The CHAIRMAN. A part of section 1?

Mr. KINGSBURY. Yes; line 8, on page 2. It says:

> And all selections heretofore made and approved under said grants and in accordance with said act of February twenty-eighth, eighteen hundred and ninety-one, if otherwise lawful, are hereby ratified and confirmed; that all pending and unapproved selections heretofore made under said grants and in accordance with said act, if found otherwise regular, and for lands subject to selection at date of approval may be approved under the provisions of said act.

We selected some of the lands 30 years ago, and they have not been acted upon by the department. They were vacant public lands at the time we selected them, and were subject to selection by the State.

This word "approval" relates to the time the department may take this list up to see whether they should give the land to the State, and if it is found then that since we selected those lands many years ago when they were vacant—if it is found that they are not subject at this particular date to selection—all those selections will be canceled. That is what we want changed. We desire to have this wording changed from "subject to selection at date of approval" to "subject to selection at date of selection," because at that time they were subject to selection, when the State was entitled to them.

Mr. RAKER. How much land is involved in the State of California in this exchange?

Mr. KINGSBURY. I think it is about 320,000 acres.

Mr. RAKER. How much is involved in which there is a conflict between the various applicants? Have you any idea in regard to that?

Mr. KINGSBURY. No; I have not.

Mr. TAYLOR. How much land is involved that would be injuriously affected by this proviso?

Mr. KINGSBURY. Seventy thousand acres that have been included in forest reserves since we selected the land. I do not know how much more.

Mr. TAYLOR. Is there any way of telling how much more there is?

Mr. KINGSBURY. No; it would take months of searching of the records. There are 70,000 acres, anyway. There is not much outside of the forest reserve. It could not be ascertained very easily.

Mr. TAYLOR. Is there any question as to the oil or timber or naval reserves or power sites?

Mr. KINGSBURY. A considerable amount of this land has been withdrawn, and the act of 1910 authorizes the President to withdraw the land under certain conditions.

Mr. TAYLOR. Is it timbered land?

Mr. KINGSBURY. Some of it is timbered land that is withdrawn, but there is nothing in any of the laws that provides for the withholding of these lands, because they are timbered lands, in reference to the lands selected by the State which were vacant lands.

Mr. TAYLOR. What is the attitude of the department in regard to the attitude of the State of California on this matter as to the justice of your protest?

Mr. KINGSBURY. I have not had a talk with the Secretary——

Mr. TAYLOR (interposing). What were you talking about when you were talking to Secretary Fisher and Secretary Lane?

Mr. KINGSBURY. We were talking about the matter of this wording in reference to the use of this word "approval." We wanted to have that changed.

Mr. TAYLOR. I am asking if they approve of your position? Do they think it is a just one?

Mr. KINGSBURY. I have not talked with the Secretary on that particular point. We were to have had a hearing with him this afternoon.

Mr. TAYLOR. I have been trying to get at what you have had these other hearings for—these hearings you had two or three years ago.

Mr. KINGSBURY. There was no question as to the right of the State to the land at the time. The question has only lately arisen since this bill was prepared. We never knew the matter was questioned in any way as to the right of the State.

Mr. TAYLOR. Why did they not confirm the title; why did they not close up the matter here years ago?

Mr. KINGSBURY. I do not know.

Mr. TAYLOR. Why have they been waiting 30 years?

Mr. KINGSBURY. A lot of them were pigenholed, and no one was here to pull them out of the pigeonholes.

The CHAIRMAN. There is a paragraph in this letter of the department in reference to that.

Mr. LENROOT. Mr. Taylor was asking you what you talked to the Secretary of the Interior about, and you say you were talking about the contract. I suppose Mr. Taylor wanted to know what the attitude of the Secretary was.

Mr. TAYLOR. That is what I wanted to get at. Was there any controversy about it?

Mr. KINGSBURY. I did not have any discussion with him in regard to this bill.

The CHAIRMAN. The legislature of the State has passed an act ratifying certain grants?

Mr. LENROOT. If this language should remain in the bill, do you think that the State of California would be entitled to select other land?

Mr. KINGSBURY. The law of the State provides that when the State is entitled to indemnity anyone in the State can make application to the State for the indemnity land. Then the surveyor general of the State sends the selections to the local land office, if the land is vacant, and the register certifies that there is no adverse claim to that of the State. Then the selection comes on to Washington and is pending before the department awaiting action. Those selections are tied up for years. Then the department examines them and if the land is subject to selection and the State is entitled to indemnity the lands are listed. We sell the land as soon as they make application for it.

The State law provides that when the acceptance is received from the register of the local land office, showing that the land is vacant, the State issues a certificate of purchase for the land, and the State law also provides that the certificates of purchase are transferable by

deed or assignment, and the original purchaser has sold the lands in many cases.

Mr. LENROOT. Do I understand that the State of California has been selling and individuals have been buying the indemnity selections when it has been found that the matters have been held up by the department and the department has refused to issue proof of the selections? Is that the situation?

Mr. KINGSBURY. That law was passed, and those lands were sold.

Mr. LENROOT. That was the situation a good many years ago. What has been the situation during the past five, or ten, or a dozen years?

Mr. KINGSBURY. The State has continued to make selections.

Mr. LENROOT. And the purchasers have taken the land with knowledge——

Mr. KINGSBURY (interposing). No; there is no knowledge.

Mr. LENROOT. There is notice, certainly?

Mr. KINGSBURY. No; because the department has always recognized the right of the State to make reselections, and has listed hundreds and thousands of acres to the public-land States, and attorneys who have practiced before the department have known the rule of the department that the land would be listed, and they have advised people that the certificates of purchase were good, and that it was only a matter of time before the land would be listed.

Mr. LENROOT. If there was any legal question, of course, the lists were not approved, so did not the purchasers take with notice of any complication that might exist?

Mr. KINGSBURY. No; because they dealt directly with the State.

Mr. LENROOT. The State knew, of course, that there were complications, otherwise it would not be here, by its officials, asking for legislation.

Mr. KINGSBURY. This matter was not brought up until 1912, and then we did not know anything about it until we saw, in a report in 1914, that those selections would not be listed until the question of the right of the Secretary to make the lists had been settled.

Mr. LENROOT. Is it true that the State of California would be willing to proceed under existing law without any new legislation?

Mr. KINGSBURY. We would, but the department says that until there is legislation——

Mr. LENROOT (interposing). I understand, but I mean would the State be willing to proceed under existing law?

Mr. KINGSBURY. That is what the State wants to do.

The CHAIRMAN. There is a paragraph in the letter of the Secretary which I think answers the question you are asking. The letter of the department says:

> Section 3 of the bill is confirmatory and is designed to permit the approval and passing of title to the States of indemnity selections heretofore made in lieu of surveyed school lands in forests or other permanent reservations. It is particularly important to the States which have made such lieu selections and to those who have purchased the selected land from the States in anticipation of the consummation of the exchange. The reason for inserting in the proviso to section 3 the clause respecting an agreement between the Secretary of the Interior and the State of California is briefly as follows: School sections in place approximating an area 7,000 acres were believed to be within the limits of certain private land grants in the State of California, and on the basis thereof the State secured lieu lands. Subsequently, upon final survey of the private grants, it was found that the sections in place in fact lay outside of the grant limits, and the State, assuming that it owned the same, proceeded

to dispose of the same to private individuals. In adjusting the school grant to the State of California this fact was disclosed, and the State, in order to protect the purchasers of the land in place and to make reparation for the unauthorized sale of the sections in place, which in fact were not State lands, entered into an agreement with the Secretary of the Interior in 1912 to select the said sections in place, aggregating, as stated, about 7,000 acres, in lieu of school sections within national forests. The entire matter of adjustments between the State and the United States has been ratified by the Legislature of the State of California, and should this measure become a law it is important that in order to entirely straighten out the matter the clause just described be included. The situation is limited to the area described and is present nowhere else.

Mr. KINGSBURY. That is only one phase of the situation.

The CHAIRMAN. What are the other phases of the situation?

Mr. KINGSBURY. That refers to the States' land, for which the States have selected indemnity. That is one phase of the adjustment of the school grant that was put in. It says:

That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests it shall be lawful for the State in pursuance of an agreement, either prior or subsequent hereto, between the State and the Secretary of Agriculture to relinquish its claim, right, and title thereto and select in lieu thereof other unappropriated nonmineral lands of approximately equal value designated by the Secretary of Agriculture and lying within the present boundaries of any national forest or forests within the State wherein the exchange is to be made; that upon the consummation of the exchange herein authorized and its approval by the Secretary of the Interior the President of the United States is authorized to eliminate from such national forest the lands so selected for and on behalf of the State: *Provided*, That the lands granted in place to such State or Territory and surrendered under the provisions hereof shall, upon the approval of the indemnity or exchange, revert to and become a portion of the national forest wherein located, subject to all the laws, rules, and regulations thereto applicable.

This agreement we entered into in 1911 provided that the State should select these lands that were excluded from Mexican claims by the United States under the act of 1877, and we were to supply school sections in forest reserves as a basis for that grant. If the bill went through as it was, the States could not do that. That was the idea of that provision.

STATEMENT OF HON. JOHN M. ESHLEMAN, LIEUTENANT GOVERNOR OF THE STATE OF CALIFORNIA.

The CHAIRMAN. We will now hear Lieut. Gov. Eshleman.

Gov. ESHLEMAN. Mr. Chairman, I am not as familiar with the details of this matter as Mr. Kingsbury, but I am very familiar with the general controversy, and I think I can state the reason for our objection to the language "for lands subject to selection at date of approval." We want it to read, "subject to selection at date of selection."

As Mr. Kingsbury has said, sometime ago it developed that the State of California, although not having received from the United States, we think, all the school lands to which it was entitled, still had, in some townships, received more than two sections.

Now, Mr. Chairman and gentlemen, I want to emphasize this point. Our selections were not approved. The Government's position at that time was this, they said those must be fixed, and therefore they refused to approve our selections on that ground alone, not that the selections were not valid, not that they were in forest reserves, not that we had too much land in the aggregate, but that in certain

townships in California we had taken too much land. I want to emphasize that point.

The State went ahead just as it had before, on the assumption that these selections would be considered valid by the Government when this objection was removed, it being the only objection that was advanced, and so the State proceeded just as it had before to the selection of the lands under the original grant of 1853, and the lieu land statute of 1891. The State proceeded to the selection of these lands from any unappropriated public lands within the State of California, and we proceeded, in our legislature, to straighten out this controversy with the Federal Government, by paying to the Federal Government a certain amount of money, $24,000, and returning certain acreage to the Government, about 12,000 acres.

While this was pending and being held up for this sole reason, selections had been made on the theory that they would be approved when the objection was removed, and the agreement was made with with the Secretary of the Interior that this would be done. The attorney general of the State, Mr. U. S. Webb, says this is true, and he wants to come on and appear before the committee in connection with this matter, if the matter is still held up.

Now, the Government shifts, and it says that this selection, if it happened after they were made, although valid when made, shall be held up for the reason I have stated, and we can not get them. That is a reason that did not exist at the time of the selection, because none of the lands were in the forest reserve at the time the selection was made. Against none of them was there a single objection, except the one I have stated, and because of the delay attendant upon the settling of this matter—many attempts are made in Congress and in the State legislatures to settle things of this sort, and that takes time, as you know—on account of that delay which was attendant upon the settling of this controversy, forest reserves were placed upon some of the lands, amounting, I think, to about 70,000 acres.

Mr. SINNOTT. You do not want forest reserves to interfere with the selections?

Gov. ESHLEMAN. No. The forest reserves having been created subsequent to the selection, which selections were made before that time and had theretofore been approved by the Federal Government, and under the exact terms of the law, we say that the creation thereafter of a Federal reserve is not a reason for denying us these lands, which have now passed to private individuals, over and over again.

Mr. LENROOT. I would like to ask you a question in that connection. Supposing in this selection it would be admitted at the date of selection the lands were not known to be mineral or oil lands, but since that time that fact has become known, what would be the situation in that case?

Gov. ESHLEMAN. If there was any such land, I do not know about it. There are some selections within the limits of oil withdrawals, so I am told. But I do not know where a single acre is located.

Mr. LENROOT. What is your view as to what the situation would be in the case I have cited?

Gov. ESHLEMAN. My view is that the State of California stands in a little bit different position than an individual before the Federal Government. If the State selected lands without any knowledge at the time that they were of such a character, and was proceeding under

a system that was approved at that time, it should not be denied the right of approval because of something that happened thereafter.

I have not studied this particular phase of the matter in regard to oil lands, because I have no knowledge that any of it was in the oil land country. I understand from the representatives of the department that where these lands are forests or power sites, they wanted to keep them.

Mr. LENROOT. Under the existing law the right of the Government to make the determination of the mineral character exists not only at the time of selection, but up to the time of approval, and with the amendment you propose the Government would be deprived of that right?

Gov. ESHLEMAN. Looking at it from the other aspect, it seems that this is the situation: In 1853 the Government of the United States granted in aid of schools in the State of California certain lands, and because of the failure of the Government to be able to deliver those lands, in 1891 we passed the lieu-land statute, allowing the government of the State of California to select from the unappropriated public lands of the United States in California, wheresoever located, any land. Of course, as between the State of California and the United States Government there can be no monopoly interest. Therefore it seems really too bad that we can not carry out contracts that we have made under the law.

The CHAIRMAN. Right in line with what you are saying, I want to ask you what amount of these lands are owned by the Federal Government and what part are in private ownership now that would be affected by this bill.

Gov. ESHLEMAN. I can not tell you in regard to the details.

The CHAIRMAN. Is not the development of a good deal of it in private ownership, and in that case, the rule just laid down would not be applicable, would it?

Gov. ESHLEMAN. I am not familiar with what the Federal Government has a right to do under those circumstances. But the lands are selected and sold by the States to private individuals.

As far as the State of California is concerned, it has divested itself of any right whatever to the land, and therefore, if anybody is going to lose it will be the private individuals. What right the Government has to go after a private individual, if it were held that the State's selection should be approved, I do not know. That is something that I, if I were a member of this committee, would want to be informed about before I passed upon that particular matter.

Mr. LENROOT. It would not have any right to approve or disapprove the selection of the State.

Gov. ESHLEMAN. It would not have any. There are only 70,000 acres in this matter, but there are 450,000 acres coming to the State of California yet. These 70,000 acres were open to selection at the time they were selected. They would have been approved but for the intervention of the objection I have outlined.

Secretary Houston has written a letter on this subject wherein he states to Senator Myers, the chairman of the Public Lands Committee of the Senate:

> Within the past few days attention has been called to the fact that some of the States, particularly the State of California, have already sold or otherwise encumbered lands which were included in lists of selection otherwise regular, which lands were subject

to selection at the date of filing of the lists, but have since been included within national forests, and are therefore not subject to selection at the present time. The disapproval of such lists would obviously be embarrassing to the States and might result in considerable hardship and injustice to innocett third parties. This department therefore suggests that to meet this situation the bill be amended by inserting after the word "approved," line 4, page 4, the following:

"Together with selections otherwise valid where subsequent to the filing of the lists the lands selected were withdrawn for national forest purposes and sold or otherwise encumbered by the State, when in the opinion of the Secretary of Agriculture this will not be prejudicial to the public interests."

Mr. RAKER. What is the date of that letter?

Gov. ESHLEMAN. This is a copy of the Secretary's letter, and the date is not on it.

Mr. RAKER. What bill does it refer to?

Gov. ESHLEMAN. It refers to Senate bill 2380.

The CHAIRMAN. Is that a letter from the Agricultural Department to the Interior Department?

Gov. ESHLEMAN. That is a letter written by Secretary Houston, Secretary of Agriculture, addressed to Senator Myers, the chairman of the Committee on Public Lands of the Senate.

We talked with the Secretary very recently, and his language points our our difficulty. The State of California has not a dollar of interest in this matter unless these people can come back on the State. But the State has made contracts, and has kept on making contracts under a course that had been approved from the early days, and which was only stopped because of an objection, which we did our level best to get rid of, and now the Government says that it happened that our lands were valuable, and therefore it is going to reserve them. That may be a strong statement, but it looks as if it was true.

Originally they granted to us the sixteenth and the thirty-sixth sections.

It was not the fault of the State that we did not get the sixteenth and thirty-sixth sections; it was because the sixteenth and thirty-sixth sections by reason of the action of the Federal Government had been so displaced that the Federal Government could not have conveyed them to us.

Is it not to be presumed that the land to be exchanged for the land of the sixteenth and thirty-sixth sections would be, on the average, of the same character of land as the sixteenth and thirty-sixth sections? If it had happened that a few of these sections were oil land and a few were timber land, can it be said we would have gotten less in the original grant?

The State of California sold the land for $2.50 to the men who own it as oil land to-day. But it happened that the sixteenth and thirty-sixth sections turned out in some instances to be valuable.

My position is——

Mr. LENROOT. There is just one distinction, so far as indemnity land is concerned, and that is, if it was mineral in character, you were not permitted to select those?

Gov. ESHLEMAN. Of course, if the State committed a fraud, if it went out on its quest to get indemnity lands that were highly valuable for power sites, or as timber sites or for oil purposes, of course, that would be a different situation, Mr. Lenroot. But these are the average lands. As I have said before, I do not know where a single

foot of the land is located and I did not know I was going to come before the committee to-day.

The CHAIRMAN. Before you leave that, I want to ask you one question. You stated that the State had no interest in it, only in so far as the purchasers might come back on the State. Will you elaborate on that? Has the State sold all these lands?

Gov. ESHLEMAN. I do not know.

Mr. GILLETT. The State has sold this land to citizens as far back as 25 years ago, and has received the money and put it into the school funds and used it.

The CHAIRMAN. All the time without any approval.

Gov. ESHLEMAN. The point is this, that there are only 70,000 acres in this matter, and there are 450,000 acres still due. Seventy thousand acres were open to selection at the time of selection, have since that time, by the subsequent creation of forest reserves fallen into territory that is not now subject to selection, and territory that the State, of course, would not permit to be selected, if they were selected now.

Proceeding as it always had, the State selected these lands, and after the selection of the land, went ahead with the disposing of the lands. They selected the lands, and the laws being plain thought that if they were unappropriated public lands they had a right to select them, and the State having selected them, goes ahead and sells them. It is just a pure formality for the Government to approve them.

Mr. LENROOT. Except as to their mineral character?

Gov. ESHLEMAN. If there had been any fraud——

Mr. LENROOT (interposing). It does not require fraud. A homesteader might, in the utmost good faith, settle upon mineral lands.

Gov. ESHLEMAN. These lands were supposed to be of a certain character, and they were the average lands in each township, wherever those townships were—I am talking about the equity of that particular proposition—wherever those sections were.

Mr. GILLETT. Unless they were known to be mineral at the time of the survey.

Mr. RAKER. You say there are about 450,000 acres of this selected land that has not been approved?

Gov. ESHLEMAN. About 320,000 unapproved, I understand.

Mr. RAKER. And included in those 320,000 acres there are about 70,000 acres that have been selected since the selections which are included within the forest reserves?

Gov. ESHLEMAN. That is the amount, as I have been informed.

Mr. RAKER. Therefore the approval of the entire 320,000 acres has been held up in the department?

Gov. ESHLEMAN. I do not think the department takes the position—there is nothing being approved at the present time.

Mr. RAKER. I assume the 320,000 acres are unapproved at the present time?

Gov. ESHLEMAN. Everything is tied up.

Mr. RAKER. These 70,000 acres within the forest reserve were selected acre for acre, with no regard to its value?

Gov. ESHLEMAN. No.

Mr. RAKER. Is it your theory that these parties who exchanged their claims within the forest reserve should have the land that they selected in lieu of the land in the reserve?

Gov. ESHLEMAN. I have not a thing to say about private parties.

Mr. RAKER. I am asking you in order to find out whether you think legislation should cover that feature?

Gov. ESHLEMAN. I say the State of California has a right, and the attorney general wires me there was an agreement with the Secretary of the Interior, and the attorney general of the State wants to come here and present the matter if it is necessary that that should be done; the attorney general informs me that there was an agreement with the Secretary of the Interior to the effect that if we did certain things in the legislature, which we have done, then the Department of the Interior would go ahead and list these lands and the attorney general desires to present the contractural feature of it if necessary. I have just had a telegram from the attorney general.

Mr. MAYS. May I ask how the fact that you happened to get too much land gave rise to this difficulty?

Gov. ESHLEMAN. The surveyor general can tell you about that better than I can. It was the fault of the Federal Government.

Mr. KINGSBURY. The land was sold to private citizens, and it was the same land as the basis for indemnity, and in many instances it turned out that the State got 1,280 acres where it was only entitled to 640 acres.

Gov. ESHLEMAN. There was a mistake, but there has been no great difficulty in straightening that matter out.

The situation we find ourselves in is that having proceeded under the course that had theretofore been approved, we now find that that course has only failed to be approved by the Government because of a certain thing that was done.

I would like to read to the committee a telegram I have received from the attorney general of the State, because, as I say, I do not want to mislead the committee into the belief that I know about the details of this matter. I have, however, been familiar ever since I have been connected with the State government, with the general issue, the vital issue as I have outlined it, and the Federal Government now takes the position that it develops if the lands selected are valuable, it shall have an option of saying whether we shall get those lands or not. I feel sure that the matter will be considered very carefully and wisely, but it seems to us as being a matter between the State and Federal Governments that the intent of the original law and the intent of the agreement and arrangements made with the Secretary of the Interior should be carried out. I have received this telegram from the attorney general, and I will say that Mr. Webb was here at the time the agreement was entered into, and I am sure he will be able to substantiate any statement he may make here. This is the telegram which has been received from the attorney general:

SAN FRANCISCO, CAL., *February 14, 1916.*

W. S. KINGSBURY,
1401 Fairmont Street NW., Washington, D. C.:

California entered into an agreement with the Government through the Interior Department whereby all lieu selections whether within or without forest reserves were to be approved if found regular. As a condition, performance on the part of the State required special legislation, and the approval of the governor. This was

done and as a consideration 12,000 acres of land were conveyed by the State to and accepted by the Government and about $23,000 in money was paid by the State and accepted by the Government. In short all things required at the hand of the State have been done. The State has performed. If committee is disposed to disregard this contract, I should like opportunity at a convenient future date to discuss with them the State's contractual rights as well as the equities resulting from such performance. We are asking nothing new. We desire that only which has been delivered to other States and to which we are entitled and for which we have paid.

U. S. WEBB, *Attorney General.*

That, briefly, is our contention, that the date of selection instead of the date of approval should be put into the bill. The Secretary of Agriculture agrees that the language as it stands is not proper, but suggests that the matter be left to the discretion of the Agricultural Department, as we understand it, one of the contracting parties, to determine when they will perform the contract. His suggestion is much better than the bill as it stands, but we believe that inasmuch as these selections would have been approved in due course without any question, and that this difficulty has nothing to do with the reason for not approving them now, therefore it is too late to advance this reason or to urge this reason on the part of the Federal Government for not approving the selection.

Mr. SINNOTT. How is the matter of the control of the mineral fields to be disposed of?

Gov. ESHLEMAN. I will have to leave that to somebody else, I do not know where an acre of this land is located.

Mr. LENROOT. Have you a copy of the withdrawal of 1910, or the proclamation?

Gov. ESHLEMAN. You mean the forest reserve?

Mr. LENROOT. That is not all, is it?

Gov. ESHLEMAN. I have not a copy of that here.

Mr. RAKER. The same objection would apply to the language used in section 3 as applies to the language used in section 1, would it not?

Gov. ESHLEMAN. Yes.

Mr. RAKER. In section 3 it says:

Whereby the State relinquished its title to surveyed school lands in forest or other permanent reservations in lieu of lands elsewhere are hereby ratified and confirmed, and all pending and unapproved exchanges of like character, if otherwise regular for public lands subject to selection and date of approval may be in similar manner adjudicated and approved.

There will be the same objection to that?

Gov. ESHLEMAN. The language in the bill shuts out the 70,000 acres. No one desires to do that; the Secretary of Agriculture does not desire to do that.

Mr. LENROOT. Would it be satisfactory if this was limited to certain selections for forest reserves or any land that might have otherwise been withdrawn.

Gov. ESHLEMAN. As far as I am concerned it seems to me that covers most of it, but I am not sufficiently familiar with the details to fully answer your question. I know it would cover a lot of it.

Mr. FINNEY. A few selections have been withdrawn for petroleum reserves. Under the law of July, 1914, those selections which can be passed upon are now within the reservations of the United States. Of course, we do not object to any amendment which would ratify and confirm the right in any of those selections.

Gov. ESHLEMAN. I have said we are willing to let the law stand as it is.

Mr. FINNEY. There are some others in water-power sites. But they are taken care of in the pending water-power bill, and we shall object to any amendment to ratify those, but not any other restrictions.

Gov. ESHLEMAN. Perhaps the Secretary of Agriculture would agree to a reservation of things of that sort.

Of course, I can not speak of any private claims because I am not here for that purpose. I am not here directly or indirectly in behalf of that. I am speaking for the right or the power of the State of California to carry out contracts which have in good faith been entered into, and, as the Secretary says, we are embarrassed by reason of the fact that we have pursued a course that had always been approved, and which we had no reason to feel would not be approved if we straightened out the only objection that was made. Having straightened out that objection, we have now another one. It seems to me a State should receive more consideration than private individuals in the broad aspect of the case. We can not carry out contracts which we had a right to believe we could carry out.

Mr. SINNOTT. Do you know whether the State is seeking lands which the Government claims are mineral or which have oil in them?

Mr. FINNEY. We do not know of any such case in California.

Gov. ESHLEMAN. We would not think of doing that.

STATEMENT OF MR. A. M. THOMPSON, OF PITTSBURGH, PA.

The CHAIRMAN. Mr. Thompson, if you desire to make a statement in regard to this matter we will be glad to hear you now.

Will you please give your name, and state who you represent and where you reside?

Mr. THOMPSON. My name is A. M. Thompson; I live in Pittsburgh, Pa.

The lumber company I represent is a Minnesota corporation. It has timber property in Minnesota, and went to California in 1902 and bought something like 22,000 acres of timber, intending to operate there. It happens that about 4,000 acres of that land is what is known as the lieu land.

Their circumstances having somewhat changed, two or three years ago they sold or attempted to sell the whole of their California holdings, and when the titles were being passed they could not make title to so much of the land there as was included in the lieu lands, but they did convey all the balance of their holdings there and were paid for them. During the latter part of the Taft administration in some way that I do not understand, because I am not familiar with the technicalities of this matter, some of the lieu land titles were made good, and they were passed under the original contract, and the company was paid for them. They have a certain period of time, which is rapidly running out, to make good their titles to the other lieu land. I think there are about 3,500 acres now remaining of their holdings. If they do not get title to them in the course of a year or more they will pass out of their original contract, and they will have these two scattered holdings there which will be practically valueless

to them if they can not pass under the terms of their contract, which covers the rest of the holdings.

It was in 1902 that they got title to the lieu lands, supposing they had a good title. A small part of it came directly from the State of California. The greater part of it passed through two or three hands from the State of California before it came into the hands of the lumber company, but the title reaches back to the State of California.

Possibly one-fifth of the lieu lands after they were obtained from the State of California were embraced with the Government forest reserve, so if the bill which the committee has before it is passed in its present form, as I understand it, we will be able to make title and be paid for perhaps four-fifths or a little larger fraction of our holdings of lieu land, but the balance of it will be tied up in the forest reserve.

We, therefore, are in favor of the amendment which we understand some of the gentlemen representing the State of California have proposed, which will enable the State to make good its title to such of these lands as are inside of the forest reserves, as well as those that are outside.

But if the committee can not see its way clear to go as far as the State desires, it will confer some benefit upon us if the bill is passed in its present form, because that gives us something.

Mr. RAKER. Where are your lands located?

Mr. THOMPSON. In the State of California near Susanville. Some of it, I think, is in the Susanville Forest Reserve. We went into it without any knowledge of the difficulties that have since developed, thinking when we paid our money to the State that we would get a good title. These later developments have embarrassed us very much.

The CHAIRMAN. Does the statement you have made serve both for yourself and for Mr. Nolte?

Mr. THOMPSON. Yes.

(Thereupon, at 12 o'clock noon, the committee adjourned, subject to the call of the chairman.)

LANDS FOR EDUCATIONAL PURPOSES.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 29, 1916.

The committee met at 10.30 o'clock a. m., Hon. Edward T. Taylor presiding.

Mr. TAYLOR. The committee will please come to order. Mr. Ferris requested me to call the committee to order and proceed with the hearing this morning and hear those who desire to be heard on H. R. 8491. That is the lieu land bill. The hearings that we had on the 15th of this month are printed; part 1, in pamphlet form, you have before you, or can get them from the clerk. It is entitled "Lands for educational purposes." That is a very good and suggestive title. There are about 80 pages of the former hearing.

Unless there is some objection we will hear Mr. Tanner now for a few minutes before resuming the hearing on the Oregon-California land grant matter. Mr. Tanner, you may proceed.

STATEMENT OF MR. W. V. TANNER, ATTORNEY GENERAL OF THE STATE OF WASHINGTON.

Mr. TANNER. Mr. Chairman and gentlemen, I did not come here prepared to talk about this bill. In fact, I did not know it was up until a short time before I came east, and consequently I am not advised as to the details concerning the exchange. It seems to me, however, that the bill in its present form is unfair to at least the State of Washington.

Mr. TAYLOR. Will you tell us why?

Mr. TANNER. The States of Washington, North Dakota, South Dakota, and Montana were admitted under the act of 1889, which gave those States sections 16 and 36 in every township, whether surveyed or unsurveyed, with the right to select lieu lands where those lands had been sold or otherwise disposed of under the laws of the United States at the time of the admission of the State. Now, as construed by the Supreme Court, that was a grant in presenti, and the State of Washington became entitled, upon its admission, to sections 16 and 36 in place. Two years later, in 1891, Congress passed an act providing for the selection of lieu lands where the States, for various causes, had lost lands—that is to say, where they had been settled upon prior to survey, or had been included in Government reservations, or were mineral or fractional sections, the States were given the right to select lieu lands.

Mr. SINNOTT. Do you have in mind the decision rendered by the Supreme Court last week?

Mr. TANNER. I have in mind the Oregon case. The Oregon grant was granted in futuri. The words were in futuri, not presenti, such as the Washington grant.

Now, the forest reserves of the State of Washington include, I should say, roughly, a third of the area of the State. The Department of Agriculture recognized our moral claim, at least, to these lands, and we have arranged for an exchange of sections within the reserves for lands of equal area and value to be eliminated from the reserves in body, so that the State may get value for value, dollar for dollar, and acre for acre.

Now, this act in section 4 requires that the State, as a condition precedent to consummating that exchange of forest lands, shall accept all of the provisions of the act of 1891. There are included in the forest exchange approximately 500,000 acres—Mr. Potter says 485,000 acres. In addition to that the State is entitled to select lieu lands of something over 200,000 acres, not under the act of 1891 but under the enabling act; or it is entitled to those lands in place. Now, we do not think that the two propositions should be tied together. We do not think, as a condition to consummating this forest exchange—it is merely, as I say, an exchange of lands of equal area and equal value—we do not think, as a condition precedent to that, that we should be required to accept the act of 1891 and relinquish some 200,000 acres of lands, because there are no lands in the State of Washington now that are worth $10 an acre, or anything like it, that could be used as lieu lands.

Mr. LENROOT. You say that for 200,000 acres you are entitled either to select lieu lands or have the lands in place. What proportion of that 200,000 acres are lands in place that you might assert title to?

Mr. TANNER. I am not advised as to the detailed figures, but the lands that we would be entitled to under the act of 1889 would be those settled upon prior to survey. We assert our rights to those lands. The settlers, of course, under the rulings of the Department of the Interior feel that they are entitled to them. I should say roughly there might be 50,000 acres of those lands.

Now, there are the lands in reservations. Perhaps we will lose that, anyway. There is some doubt as to our right to those lands in place.

Mr. LENROOT. Hasn't the Supreme Court passed on that question?

Mr. TANNER. It has not passed upon it, unless it was very recently. It has been a year or two since I have been over this subject.

Of course, the mineral sections we would not be entitled to in place. We would be entitled to the forest lands, I think, in place. There are fractional sections which, of course, we are not entitled to in place. I could not answer your question definitely. I am not advised as to the detailed figures.

Mr. SINNOTT. Have you read that decision rendered, that decision last week in the Oregon case?

Mr. TANNER. I have seen it when it was announced.

Mr. SINNOTT. I was just wondering what bearing it had on this.

Mr. TANNER. The words of the Oregon grant, like all grants prior to—I really believe the Washington grant was the first one—the Washington grant, says, "Are hereby granted," and then says that they shall be entitled to lands whether surveyed or unsurveyed. Now

in the Oregon grant the words were a future grant, "shall be granted," the same as all the earlier grants.

Mr. SINNOTT. It does not attach until the survey is made?

Mr. TANNER. No; not until the lands are surveyed.

Mr. DILL. Your objection to this section 4 is what?

Mr. TANNER. I think it ought to be eliminated. If section 4 was modified so that we would not be required to accept section 1 as a condition as consummating the exchange under section 2, it would be all right.

Mr. TAYLOR. Have you prepared a substitute or an amendment to section 4 that in your judgment would cure the objection that you make as to States like Washington, that you claim received the grant in presenti, and yet would not affect other States?

Mr. TANNER. I have not prepared such an amendment, but it would be very simple, I think.

Mr. TAYLOR. Can you suggest one to the committee?

Mr. TANNER. I suppose the committee would desire to require a State to accept section 1 by constitutional amendment—or section 2 by constitutional amendment, as the case might be—and I think if section 4 were modified so that they might ratify or accept by constitutional amendment section 1 or section 2, in order to get the benefits of those sections, that would be satisfactory.

Mr. DILL. What other States did you say were affected the same as Washington by this?

Mr. TANNER. South Dakota, North Dakota, Montana, and Idaho, that I know of. I think those are the States where the exchanges have been made.

Mr. DILL. Are the exchanges anywhere near completed?

Mr. TANNER. I think that Mr. Potter will be able to tell you more about that.

Mr. POTTER (of the Forest Service). The examinations have been completed in South Dakota, Idaho, and Montana. In Washington we have examined about one-half of the lands.

Mr. TAYLOR. Does any member of the committee desire to ask Mr. Tanner any questions?

Mr. LENROOT. I would like to ask one question. I do not understand this very well. What is your objection to sections 1 and 2 being made applicable? It is optional with your State to take the benefits of it or not?

Mr. TANNER. Simply this, that our exchange, which is in process of consummation now——

Mr. LENROOT (interposing). Right there, let me ask you this. You claim that the department has a right to effect those exchanges with you?

Mr. TANNER. I think the department has the right, but the present agreement, under which we are working, does not contemplate that the department shall act without the authority of Congress. The present exchange involves——

Mr. LENROOT (interposing). Then it does involve—of course Congress will itself determine the equity of those agreements, subject to modification.

Mr. TANNER. Of course, and the agreement recognizes that; but we do not think it is fair that in order to enable us to get 500,000 acres of land from the forest reserve—land that we have lost by reason

of the establishment of the reserve—we do not think it is fair that we should be compelled to relinquish the 200,000 acres of land that we may obtain from some other source. We do not think those propositions should be tied together.

Mr. RAKER. What is the status, as you claim now, of the lands—that is, sections 16 and 36, in place, so far as the State of Washington is concerned?

Mr. TANNER. The status is this: The Department of the Interior has construed the act of 1891 as applicable to the State of Washington, and disregarded our claim to the sections in place. We have asserted our claim to the sections in place and have carried it so far as to obtain a favorable decision in the State Supreme Court, but it has not been carried out.

Now, the State of Washington is confronted with this situation: It must either oust the settlers or it must lose its lands. That is the status of sections 16 and 36, settled upon prior to the survey.

Mr. RAKER. Prior to the survey?

Mr. TANNER. Yes. We hesitate to bring suit against homesteaders who have obtained lands under the rulings of the Department of the Interior, but we do not believe this forest exchange should be held over us as a club to make us relinquish to the settler those lands, and we hope after this exchange is through, and we hope to get it through, we hope the Department of the Interior, and perhaps the Forest Service and the Department of Agriculture, will see the necessity of giving us some other lands somewhere to take care of our rights to these lands.

Mr. RAKER. There is no question as to sections 16 and 36 that is not involved in a forest withdrawal, so far as your State is concerned is there?

Mr. TANNER. There is a question of whether we are going to oust the homesteaders.

Mr. RAKER. That is what I want to get at. Then the trouble with your State is as to the actual homesteaders on sections 16 and 36 in place, that are not within forest reserves, by virtue of actual settlement?

Mr. TANNER. That is one of our troubles, yes.

Mr. RAKER. And your contention is that if there is actual settlement upon it before the land was surveyed, of course you are entitled to an exchange to other lands in place?

Mr. TANNER. The condition is under the enabling act we are entitled to lands in place, and there is no such thing in the State of Washington as settlement prior to survey, because the enabling act gave us the lands, whether surveyed or unsurveyed. That is our contention, and we contend that we should not be compelled to relinquish that claim in order to get through this forest exchange, about which there is no question as to the fairness.

Mr. RAKER. Have you attempted to make your exchange for the land that was occupied?

Mr. TANNER. We have attempted to make that exchange.

Mr. RAKER. And that has been denied by the department?

Mr. TANNER. That has been denied by the department.

Mr. RAKER. Then in the forest reserve you have the same difficulty, that the department claims you can not exchange land in place since the reserve has been made?

Mr. TANNER. We have no difficulty with the forest reserve exchange.

Mr. LENROOT. As to completing, it requires congressional action.

Mr. TANNER. It requires congressional action for completion.

Mr. LENROOT. Now, this 200,000 acres, does that include your claim for lands in place in Indian reservations?

Mr. TANNER. I think it does. I am speaking very roughly as to that. I think it includes that. My recollection is that our total deficiency is something like 730,000 acres. Now if 485,000 acres is in the forest reserves it leaves an excess of 200,000. I made it 200,000 in order to be sure I was within the limit.

Mr. RAKER. Does that proviso in the enabling act affect you in anyway, that the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grant?

Mr. TANNER. It affects us on Indian reservations and military reservations, but there were no national forests at the time of the passage of the enabling act. And that is the question that I suggested a moment ago about Indian reservations. It says that we shall not be entitled to lands in the reservations until the reservations shall have been extinguished. The question is whether we are entitled to sections 16 and 36 in Indian reservations when they have been extinguished?

Mr. DILL. We are just about to open—at least we think we are—the Colville Reservation now. Is there going to be any effort made on the part of the State to assert a right to the sections up there?

Mr. TANNER. I do not think so. There has not been any effort made in the case of other reservations.

Mr. DILL. Of course, there are Indian allotments strung all through those sections.

Mr. TANNER. Yes.

Mr. LENROOT. Is there anything in this act, Mr. Tanner, that would prevent you from bringing your particular proposition before Congress, and not taking part in the option given by this act?

Mr. TANNER. There is nothing in the act that would prevent it. The only thing is it would be very difficult to get legislation after this act is passed, and it seems to me that it is not a very serious amendment to this act to provide that the State—that section 1 shall not be applicable unless it is ratified by constitutional amendment; and section 2 shall not be applicable unless ratified by constitutional action in the same State, accepting the proposition; so that in order to get the benefits of section 2 we will not have to relinquish rights under the enabling act which are conceded by departmental construction of the act of 1891.

Mr. TAYLOR. Would it not be well for you and the three Representatives here from Washington to confer together and draft some concrete proviso to this section 4, that you think would protect your rights, and let the committee pass upon it?

Mr. TANNER. I would be very glad to do that.

Mr. LENROOT. I would like to have it submitted to the department for its report.

Mr. JOHNSON of Washington. I have just sent to my office for a concisely written letter from an attorney who has taken up this matter. I have had a couple of hundred letters from settlers in

southwestern Washington in regard to it, and I would be glad to put this attorney's letter in to supplement Mr. Tanner's statement.

Mr. TAYLOR. Can you, Mr. Johnson, give any more light on the subject?

Mr. JOHNSON. Just as soon as the letter comes down I will be very glad to read it to the committee. It is short and concise.

Mr. TANNER. I will be very glad to prepare an amendment.

Mr. TAYLOR. I think you should do that. Give us something to work on here; let us get your ideas as to what you think will protect your rights. Then I would also like to know—and I think the committee would—as to how that would affect other States—where we would land on this matter if we undertake to put in a proviso for every State, how it would affect the rest of them.

Mr. DILL. Do you not think it ought to be referred to the Department of the Interior?

Mr. MCPHAUL (of the Land Office). This is a very complicated proposition, and one that the Department of the Interior has given a great deal of study to. The bill was prepared by Mr. Proudfit and Mr. Finney, under the Department of the Interior, and Mr. Jones, First Assistant Secretary. It is an attempt on their part to strike out all of the difficulties that they have been contending with in the lieu-land selections.

Mr. TAYLOR. You think the Interior Department has carefully considered the questions raised by Mr. Tanner, do you?

Mr. MCPHAUL. Yes, sir; they have, because there is a great difference of opinion as to what the law is in that regard.

Mr. SINNOTT. Have the various States—the officials of the various States—been consulted in the matter?

Mr. MCPHAUL. A draft of the bill was sent to the different States, with an invitation for their criticism, and I have an idea that is the reason Mr. Tanner is here offering his criticism of the bill in behalf of the State of Washington.

Mr. SINNOTT. Have you heard anything from the officials in Oregon—approval or disapproval?

Mr. POTTER. No, sir; I have not.

Mr. TANNER. That is not necessary, because they are not affected.

Mr. RAKER. Will you just state, Mr. Tanner, in as concrete form as you can—and I know you can do it—just what your people want, if anything, relative to legislation to straighten up the difficulties now existing in your State with regard to sections 16 and 36 and the adjustment with the Department of the Interior.

Mr. TANNER. We want, first——

Mr. TAYLOR (interposing). Let me supplement what Judge Raker says. You understand it was suggested by Mr. Potter, and if this bill has been exhaustively considered and is really a departmental bill, and they have determined that this does full justice as near as possible to all these Western States, it would necessarily require a pretty strong, forcible, and clean-cut showing here in order to convince the committee of the justice of modifying the measure. I feel that you ought to present it here in a pretty succinct and clean-cut way, so that the committee will at least comprehend wherein you are being wronged in this matter.

Mr. TANNER. I believe I can do that.

Shortly after the act of 1891 was passed the Department of the Interior—or the Secretary of the Interior—ruled that it was applicable to the States of Montana, North Dakota, South Dakota, and Washington.

Mr. TAYLOR. When was Washington admitted to the Union?

Mr. TANNER. In 1889. In other words, the Department of the Interior held that Congress had the right to, and did modify our grant in the enabling act. We contended, on the other hand, that the enabling act and the admission of the State under it constituted a compact with the United States; that we were entitled to the lands that they gave us in the enabling act, and that Congress was thereafter powerless to take those lands back and give us lieu lands in place of the sections as they were actually existing at that time.

Mr. TAYLOR. Has that matter ever been passed upon by the Supreme Court of the United States?

Mr. TANNER. It has not. That conflict in ideas has continued to the present time. The department insists that the act of 1891 modified the enabling act. We insist that it did not, and that we are entitled to the lands in place. We carried a case to the Supreme Court of the State and there obtained a decision that we were entitled to lands in place, whether surveyed or unsurveyed.

Mr. TAYLOR. Has the Government appealed from that?

Mr. TANNER. That was not a suit against the Government, it was a suit against a homesteader. The Government, on the other hand, brought suit to test the matter in the Federal court. They brought suit against one of the State's grantees to test the matter. Then we conceived the idea of an exchange. I came to Washington some two years ago and spent the summer here, and the result was that we affected an exchange so far as the forest reserve lands were concerned—that is, we made a contract providing for the exchange. We could not do anything about any lieu lands, there being no available lieu lands in the State, to replace the other lands that we had lost by reason of the construction of the department; but we thought we would at least clear up the forest land situation, and an agreement was entered into and is now being carried out.

Now, the Department of the Interior, in order to make this construction that they had placed upon the act of 1891, in order to support that construction, proposed this bill tying our exchange to the construction of that act.

Mr. DILL. In other words, they proposed to have Congress declare their construction of it as the law?

Mr. TAYLOR. Or prevent you from making——

Mr. TANNER (interposing). Prevent us from making the exchange of lands of equal value and equal area in the forest reserve. They proposed to make us accept by constitutional amendment the department's construction of our grant, which we think is wrong, and which our court has held wrong, and so have other courts.

Mr. TAYLOR. Have you taken any other steps toward testing that matter, carrying the case to the Supreme Court or getting any final determination that would possibly override the departmental construction?

Mr. TANNER. There is this case pending in the Federal court, brought by the United States to quiet the title to a section of land that it has issued a deed for. That case has been permitted to rest in the hope

that this exchange, and perhaps other exchanges, later ones, would clear up the situation.

We hope some day to get the Department of the Interior to recognize the fact that we were entitled to these lands in place and that they will make some effort to protect the settlers that they have put on there, and that perhaps they will persuade the Secretary of Agriculture that he ought to give us some more lands from reserves to compensate us for our loss. We do not know whether we will be able to do that or not. We were not able to do it before. But we do not want to be tied up with this forest exchange now.

Mr. RAKER. If your contention is correct, why—what necessary legislation do you need in regard to the school sections? You have got the land.

Mr. TANNER. It is a serious matter to oust homesteaders from their homes—a large number of homesteaders who have gone on there in the faith of the rulings of the Department of the Interior, even if we think those rulings are wrong. We would rather, if we could, take lieu lands somewhere, if we can get them.

Mr. RAKER. You are making no contention—or do not desire any legislation, so far as the lands lying within the forest reserves are concerned?

Mr. TANNER. We desire section 2 of this act.

Mr. RAKER. For the purpose of exchange?

Mr. TANNER. For the purpose of exchange, and we have no objection to the passage of section 1 as to any other State, or the passage of it applicable to the State of Washington if we are permitted to complete our forest exchange without being tied to section 1—without being compelled to accept the act of 1891.

Mr. LENROOT. Isn't this about the situation: The purpose of this bill is to clear up this entire question and get it adjusted. What you really want is to get that part of it adjusted that is clearly for the benefit of the State of Washington, and leave the State of Washington entirely free to assert its claim to lands which the department has held it has no title to?

Mr. TANNER. You say for the benefit of the State of Washington?

Mr. LENROOT. If you assume it is otherwise, they would not exercise the option.

Mr. TANNER. It is for the benefit of the United States as much as for Washington.

Mr. LENROOT. Yes; I did not mean there was no reciprocal benefit.

Mr. TANNER. That is what we want; yes. We want to go as far as we can on a fair exchange, and of course I can not speak for the State of Washington, but I would say that if we can not get our lands in the forest reserve—lands of equal area and equal value without relinquishing 200,000 acres of other lands, that we had better not do anything at all, but insist on the lands in place. And I feel sure that some day the United States will be very anxious to get us out of the forest reserves with our scattered sections, blocking logging operations.

Mr. TAYLOR. In other words, your idea, Mr. Tanner, is personally, at least, that if this bill can not be amended, you would like to have the State of Washington exempted from the operations of it.

Mr. LENROOT. They do not have to accept it.

Mr. TANNER. It does not apply to us unless we accept it. But I do think Congress should permit us to make this exchange without relinquishing rights which we think we have, and which are not in any way related to the exchange of the forest reserves.

Mr. TAYLOR. Has the State expended some money in surveys and in the work of carrying out the exchange?

Mr. TANNER. The State and the department together, I think, have expended something like $50,000. We bear half of the expense and the Department of Agriculture bears half of the expense.

Mr. RAKER. Now, as a matter of fact, where there was an occupancy of the sixteenth and thirty-sixth sections in Washington prior to the enabling act, or before it was identified, your State did make selections of lieu land in place of that land, and your supreme court affirmed that selection and held that it was the intent of Congress—although the act was a grant in presenti—that the other acts applied, and it really was the intention to permit the exchange where there was a settlement prior to the grant. That case was appealed to the Supreme Court of the United States, and in 190 U. S., page 189, the Supreme Court did confirm your supreme court and hold that your State had a right to make the selections and were entitled to the lands selected.

Mr. LENROOT. That is not the situation at all.

Mr. TANNER. No; that is another situation. Let me see if I can not make this clear.

Here is a section of land that was not surveyed at the time the State was admitted. John Doe settled upon it in 1895, and a patent was subsequently issued to him by the Department of the Interior or by the United States. That was a section 16, and under the enabling act we claim the State was entitled to it. Our supreme court has held that we are entitled to the section. That is one situation.

Over here is a section 16 in the forest reserve. We are unable to obtain that land because the United States claims title to that, because it was included in the forest reserve. Now they say before they will give us a section in lieu of the one in the forest reserve we must relinquish our claim against the homesteader over here and take lieu land somewhere else for that; and there is no lieu land. Now that is our situation.

Mr. SMITH of Idaho. The land in the forest reserve could be taken in lieu?

Mr. TANNER. If they would let us take it, and that is what we want to do.

Mr. MCPHAUL. The fact is, that under the present law you have no right to make exchanges in the forest reserves.

Mr. TANNER. It is true we have no right to make exchanges in the forest reserves under your interpretation of the law. I think it can be arranged without an act of Congress, but we are entitled to the lands in place under our contention.

Mr. BAKER. Providing they were not settled upon before the enabling act.

Mr. TANNER. If they were not settled upon before the enabling act?

Mr. BAKER. That is what I said the supreme court held in that case. I was not talking about the reserves—the forest reserves. I was talking about the settlement on the land.

Mr. TANNER. Where they were settled upon before the passage of the enabling act, why then we are entitled to lieu lands. Then the enabling act provides for lieu land.

Mr. RAKER. Well, they also held that the State was not entitled to it subsequent to the act and before it was surveyed, did they not?

Mr. TANNER. No; there is no such decision.

Mr. LENROOT. The decision was just the contrary. The title passed to the land.

Mr. TANNER. The decision of the Supreme Court was to the contrary, but it has never been to the Supreme Court of the United States.

Mr. RAKER. This is 190 U. S., 179. The title of the case is "State of Washington *v.* Johansen." It is on page 24 of that document.

Mr. TAYLOR. Is the public land that is valuable, outside of the forest reserves, in Washington practically all gone?

Mr. TANNER. It is all gone; yes.

Mr. TAYLOR. There is nothing outside of the forest reserves left of much appreciable value?

Mr. TANNER. I might explain that Johansen case. It is not applicable to this situation at all. My recollection of the matter is a little hazy, but that case involves the right of Johansen, who was a settler, as against the State. The qestion was whether he had a right to settle upon the land, a right to homestead the lands. They had been reserved by the organic act of the Territory, but had not been included in the enabling act. It was held that he had no right to maintain the action. Subsequently Congress passed an act curing that and granted those lands to the State. That, roughly, is what there is in the Johansen case.

Mr. TAYLOR. Does any member of the committee desire to ask any further questions of Mr. Tanner? If not, we will hear you, Mr. McPhaul.

STATEMENT OF MR. JOHN McPHAUL, CHIEF LAW CLERK, GENERAL LAND OFFICE.

Mr. MCPHAUL. Before your committee adopts the amendment suggested by the attorney general from Washington I think it would be well to have the Interior Department consider it.

Mr. TAYLOR. As Mr. Lenroot suggests, when the gentlemen from Washington present something in concrete form that they would like to have added to the bill we will ask the department to pass upon it.

Mr. MCPHAUL. Of course, as the attorney general said he did not represent Washington, and I do not represent the Interior Department here either. I came up here this morning on another matter, but I will say this, we made an earnest effort in the bill which the committee has before it now to work out the differences between the State and the Government.

As Mr. Tanner says, the Interior Department shortly after the passage of the act of 1891 held that it applied to those six States and adjudicated the claims accordingly. The State of Washington took advantage of that decision and made numerous selections; just how many I can not say, of course, offhand, but all of those States did

generally, and the thing was adjudicated in that way and settlers went upon the land. Of course the Interior Department can not safely go ahead now in the State of Washington and permit those exchanges to go on when it knows the supreme court of the State is going to take the land away from the settlers, under the decision in the Whitney case, unless this bill is passed with the condition that you gentlemen are perfectly familiar with, because you nearly all represent public-land States. Adjudication of the selections made by the States is going to be held up until Congress relieves the situation in some way and settles what the law is.

Now, if the Supreme Court of the United States should affirm the decision of the Supreme Court of the State of Washington and hold that the act of 1891 did not apply to the State; that they were entitled to the lands in place whether surveyed or unsurveyed, it unsettles, roughly speaking, the titles to perhaps several million acres of land now in the hands of homesteaders, people that took them under the homestead law prior to the survey, as read by Mr. Raker there.

Mr. RAKER. Your contention, as you stated it awhile ago, is that the decision of the Supreme Court of Washington—not the Supreme Court of the United States—was that they could make the exchange?

Mr. MCPHAUL. That is the position of the Interior Department; and I will say frankly that personally I believe in the Whitney decision of the Supreme Court of the State of Washington. That is my personal opinion, not the opinion of the Interior Department. I think the supreme court correctly decided the law in that case. I do not think the law of 1891 applies to those six States; but that is my individual opinion, not that of the Interior Department.

Mr. TAYLOR. Mr. Finney, I believe, represented the Interior Department when we had the matter here before. We probably will have him here again.

Mr. MCPHAUL. I want to suggest the extreme seriousness of the proposition and where it will lead to. So far as the Interior Department is concerned, speaking for myself as one of the insignificant representatives of the department, it does not affect the department; but if you adopt that amendment you unsettle the whole purpose of the legislation. We do not care—speaking generally again—anything about that section 1. That is an exchange of interforest areas under a scheme between the Secretary of Agriculture and various States—and probably a very wise one—but I do not think anybody believes it is authorized by law. However, if you adopt this bill, you do, I think, a very wise thing. I think it is a wise provision, but at present unauthorized. The bill as a whole covers all the features of the case. It will protect the settlers that the Attorney General spoke about, but it is not going to protect only such settlers as the State of Washington may select. It is going to protect all of them; and if the State is not willing to protect all of the settlers and put in force provision No. 2, it can reject the whole thing and stand on the law as it is or as it may be subsequently decided by the Supreme Court.

Mr. LA FOLLETTE. I believe you stated that personally you believed the Supreme Court of Washington is right in its contention?

Mr. MCPHAUL. Yes, sir; that is my personal opinion, not the opinion of the Interior Department.

Mr. LA FOLLETTE. And if that is the case, and the State of Washington would lose largely by accepting this bill and coming under

it, do you not think that the State of Washington is well within its rights in asking for an amendment that would correct that? Now I think, as the attorney general of Washington has said, that we have no desire to make it hard for those settlers. I should judge the Interior Department would not feel that they should make it hard on those settlers because they have allowed them to go on the sixteenth and thirty-sixth sections prior to the survey. Now don't you think it would be within the province of Congress, in a State like Washington, that has one-third of its territory put into forest reserves, where the good lands have been taken and the State could not get land of equal value out of the forest reserves—do you not think that Congress should allow them to take that amount of land in the forest reserve?

Mr. McPHAUL. Why, as I construe it, the State of Washington on account of the large area of the State within national forests, would be affected less by section 2 than any other State in the Union, because it only applies to lands settled upon prior to survey, and appropriated under the public land laws, where there is a settler on it. But if you adopt what the attorney general asks you to adopt, you can not help the settler at all. There can be no exchange with the State of Washington. There can be no exchange under the act of 1891 as he construes it.

Mr. LA FOLLETTE. What about the 200,000 acres in the State?

Mr. McPHAUL. Well, he can explain that in the way that he see it, but I do not see it that way, of course. But if you adopt that amendment you kill the bill absolutely. The attorney general will tell you that exchange under the laws now as the court construes them in Washington—you can not expect a single exchange if you adopt the amendment he suggests. You can not protect the settler in the State of Washington. I will ask him that question right now. Can you, if you adopt the admendment you suggest, protect a single settler?

Mr. TANNER. No, it does not kill it at all. The amendment I suggest does not affect it at all, as to any State that wants protection.

Mr. McPHAUL. That is the only provision, and if your supreme court has decided the law correctly—and I think it has—there is no authority for such exchanges. And I think that unless you accept this provision in the bill there is no authority for it and not a single settler will be protected.

Mr. TANNER. If I might say one word—I want to say that this is a serious matter. I feel that if the State of Washington is compelled to go to the Supreme Court of the United States, that they will affirm the Whitney case, and it will unsettle the question in these six or seven other States. It will result in a decision that none of these States were entitled to the benefits of the act of 1891; that all of their lieu selections are invalid; that they were entitled to lands in place. That is a consequence which we wish to avoid, and the reason we do not want to litigate; the reason we want to get these exchanges.

Mr. SINNOTT. What are the States you have in mind?

Mr. TANNER. I have in mind the four States I mentioned, North and South Dakota, Montana, and Washington, also Idaho and Wyoming—six States altogether.

Mr. LENROOT. If your amendment is adopted, where would be your settlers? Not one of them could convey a valid title.

Mr. TANNER. Not unless the Department of the Interior and the Department of Agriculture makes some arrangement.

Mr. LENROOT. They could not without action of Congress.

Mr. TANNER. No, but we thought maybe we could get two-thirds of this matter cleared up without involving the other third. It ought to be done.

Mr. SINNOTT. Oregon is not involved at all, you say?

Mr. TANNER. I do not think Oregon is involved at all. The act of 1891 applied to the State of Oregon, and they have taken the benefit of it.

Mr. TAYLOR. Are there any further questions? If not, we will hear from Mr. Johnson.

STATEMENT OF HON. ALBERT JOHNSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON.

Mr. JOHNSON. I have a letter here from Edward M. Comyns, an attorney of Seattle, in which he presents a statement in regard to this matter, and addresses it to a discussion of Senate bill No. 2380. I would like to place that letter in the record so it can be read by the members of the committee.

Mr. RAKER. I guess that is the same matter he sent to each member of the committee in the House.

Mr. JOHNSON. I have just learned that various members received it, but it might go in the record.

Mr. TAYLOR. Has it already gone into the record, does anyone remember? I guess it has not, and without objection this letter offered by Mr. Johnson will be incorporated in the record.

Mr. RAKER. How does that letter of attorney Comyns correspond with your views?

Mr. JOHNSON. I have not gone into this matter very deeply. I was in hope that a settlement in behalf of the State of Washington would be effected at the time the Agricultural Department, through the Forest Service, authorized the beginning of some surveys to effect an exchange of lands in our State. That survey has been going ahead, and the statements have been printed from time to time out there from various people, various officials of the State government, that at all hazards they would endeavor to protect those who originally settled on those lands. They are homesteaders, pioneers of the State of Washington.

Mr. RAKER. Is it your view that the present provisions of the bill are all right, so far as the State of Washington is concerned?

Mr. JOHNSON. I have not given it full consideration. My attention was first called to the Senate bill, S. 2380.

Mr. RAKER. That is the bill of Senator Myers.

Mr. JOHNSON. And I took it up with him at once, and I have a letter from him in which he states that he has no personal interest in it and did not know at the time of its introduction that it might interfere with the rights of bona fide settlers. Since then he has had a number of complaints from settlers.

Mr. TAYLOR. Senate bill 2380 is the same as H. R. 12116, I believe.

Mr. JOHNSON. It is the duplicate of the bill as originally introduced in the House. Unless the bill you are now considering is amended, it is exactly the same. He says the bill is now before the Senate Committee on Public Lands, and before doing anything with it he will investigate complaints, and if they appear liable to interfere with the rights of settlers he would either have it amended in committee so as to overcome that objection or drop it and do nothing further with it.

Mr. TAYLOR. I would suggest, Mr. Johnson, that you gentlemen from Washington confer about this matter, and if you desire to return here with some presentation of the matter, do so. Mr. Tanner says he has no authority to speak for the State, but somebody ought to have authority to speak for the State.

Mr. JOHNSON. I might say, representing as I do a part of the State, that Mr. Tanner, our attorney general, has been very energetic and has taken a leading part in an effort to effect exchanges by which we could get out the 11,000,000 acres within our boundaries in the forest reserves—get out those lands and make exchanges so that we will be able to assess those lands for taxation.

As Mr. Tanner states, when you come to a lieu land proposition, an exchange proposition, we have got nothing left of any particular value to exchange.

Mr. RAKER. Your only question is that if the exchanges are made they should be made for lands in the forest reserves?

Mr. JOHNSON. The forest reserves should relinquish the bottom lands that are available for agricultural purposes and permit them to be exchanged so that they could be settled and become taxable for the State of Washington.

Mr. LENROOT. I would be very glad if some one could furnish this committee at some future time data as to what makes up this 200,000 acres; how they are involved in settlers' homestead claims, etc.

Mr. JOHNSON. This letter from this attorney states that it would result in depriving more than 200 citizens of the State of Washington of land applied for by them under the public land laws, and he indicates that it is mostly located in the counties of Jefferson and Whatcom, but I think there are many more. I have had numerous letters from southwestern Washington.

I thank you, Mr. Chairman.

(The letter referred to follows:)

[Public land mining. Edward M. Comyns, attorney at law, 601 Central Building.]

SEATTLE, WASH., *January 21, 1916.*

Hon. ALBERT JOHNSON,
House of Representatives, Washington, D. C.

DEAR SIR: I desire to call to your attention the proposed legislation contained in Senate bill No. 2380, with a view to enlist your services in defeating this measure in its present form.

The first section of said bill provides in part that the provisions of the act of February 28, 1891, shall be held applicable to the grant contained in the act of February 22, 1889, and confirms to the State all pending selections made according to the terms of said act for land contained in the grant.

This proposed enactment will result in depriving more than 200 citizens of the State of Washington of land applied for by them under the public-land laws, many of which applicants made filings long prior to the filing by the State of its indemnity selections.

These selections for the most part were made by the State of Washington in the counties of Jefferson and Whatcom in the year 1905.

The validity of these selections was at all times questionable and the department up to this date has failed to certify and approve a single acre of such selections. The question of the validity of these selections has never been passed upon by the department. While the invalidity of such selections has been repeatedly urged by the applicants under the homestead and timberland acts, the department has invariably held that the mere embracement of land in a State selection list withdrew the land so embraced from other disposition under the public-land laws, and that it was unnecessary to determine as to the sufficiency of the State's base.

The fact that the department by its failure or unwillingness to certify any of these selections and thus pass title to the State precluded the possibility of having the issue tried in the Federal courts, although the issue as to the applicability of the act of February 22, 1899, was passed upon in the case of State v. Whitney (120 Pac., 116), and it was therein held that said later act was not applicable to said State.

It is now designed by this bill to confirm these selections without regard to their validity or invalidity at the time of filing same.

It must be concluded that neither the State nor the Department of the Interior wish a judicial determination of the question, but desire to eliminate these claimants by new legislation.

As stated, many applicants made their filings prior to the tender of the State's list. The State making these filings within 90 days after the filing of the plat in the local land office, was held by the department to come within the preference right of the grant to said State under the act of May 3, 1902 (32 Stat., 188; 36 L. D., 89, 273), although said act in explicit terms states that the preference right given was only applicable to the grant contained in the act of February 22, 1889, and these selections were clearly made under the act of 1891.

All applications made subsequent to the State's filing were rejected without consideration of the question of the validity or invalidity of the State's right to select, it being held by the department that the mere proffer by the State of a selection was sufficient to secure the land embraced in such list from other disposition under the public land laws. (34 L. D., 12.)

Such holding, it must be apparent, virtually suspends the operation of the laws providing for disposition of the public domain touching vast tracts of public lands otherwise susceptible to purchase and entry. Such practice, we submit, is illogical and unreasonable and in violation of law.

Upon careful consideration of this bill and its effect upon the citizens of the State of Washington who have attempted to avail themselves of public land acts, I trust you will not find it inconsistent with your duty either to the State of Washington or your constituents to oppose the passage of this bill as now framed.

The elimination of the first section thereof would give these claimants the remedy of the courts.

Inasmuch, however, as it appears it is conceded that the State of Washington requires legislative confirmation of its selections, I believe that said first section of the bill should be amended to somewhat the following tenor and effect:

"That where applications have been made for land embraced in indemnity selections of the State of Washington made under the act of February twenty-eighth, eighteen hundred and ninety-one, such land shall be held to be subject to the claims of such applicants, and the State of Washington may select other indemnity therefor as provided in section two of this act."

It will be noted that the State of Washington loses nothing by the allowance of the claims of these applicants, since it may secure indemnity for all its losses, the land in satisfaction thereof being taken from one of the forest reserves as provided in the act.

Thanking you for such assistance as you may deem proper to afford your constituents in this matter,

I am, very respectfully,

E. M. COMYNS.

LANDS FOR EDUCATIONAL PURPOSES.

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Thursday, March 30, 1916.

The committee assembled at 10.30 o'clock a. m.

Present: Representatives Ferris (chairman), Taylor, Raker, Stout, Church, Dill, Lenroot, La Follette, Kent, Sinnott, Smith, and Timberlake.

The CHAIRMAN. Gentlemen, this meeting is called for a further hearing on H. R. 3491. The hearing was begun on February 15, 1916, and was interrupted for the consideration of the Oregon and California land grant matter.

Mr. Finney, of the Department of the Interior, is here, and he wants to incorporate in the record a letter and a decision that he has bearing on some of the matters that were treated of in the first day of the hearing. Mr. Finney, will you proceed at this time?

ADDITIONAL STATEMENT OF MR. E. C. FINNEY, OFFICE OF THE SECRETARY OF THE INTERIOR.

Mr. FINNEY. In connection with the statement of the Attorney General of the State of Washington before the committee, with respect to the grants to that State, and to Montana, South Dakota and North Dakota, page 83 of the record, I would like to introduce departmental decision of April 14, 1915, which sets out quite fully the various laws and decisions of the department with respect to those grants, and there he cites upon unsurveyed land.

The CHAIRMAN. Without objection, that will be incorporated in the record at this point.

(The paper referred to is as follows:)

FANNIE LIPSCOMB.

[Decided April 14, 1915.]

Settlement—Unsurveyed land—Enlarged homestead.—A settler upon unsurveyed land subsequently designated under the enlarged homestead act is, upon the filing of the township plat of survey, entitled to make entry of the land embraced in his settlement claim up to the full area of 320 acres permitted by the enlarged homestead act.

Settlement upon school sections after survey.—No rights are acquired by settlement upon school sections subsequent to survey in the field.

School lands—Identification by survey—Settlement claims.—Under the grant for school purposes made to the State of Montana by the act of February 22, 1889, the State takes no vested interest in or title to any particular tract until it is identified by survey, and where at that time covered by a valid settlement claim the grant does not attach, and the State's only recourse is to the indemnity provisions of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes.

School land indemnity—Act of February 28, 1891.—The purpose of the act of February 28, 1891, amending sections 2275 and 2276, Revised Statutes, was to place all the States and Territories containing public lands, and to which grants had been made for school purposes, in a similar position, alike entitled to the benefits and subject to the conditions imposed by said act.

Jones, First Assistant Secretary:

April 25, 1907, Fannie Lipscomb made homestead settlement upon what is now the SW. ¼, Sec. 16, T. 32 N., R. 57 E., M. M., then unsurveyed. May 1, 1909, the land being still unsurveyed, she extended her settlement claim, under the enlarged homestead act, to include the S. ½ SE. ¼ of what is now sec. 16, Glasgow, Montana. The land was surveyed in the field between November 26 and December 3, 1908, and the plat of survey approved by the Commissioner of the General Land Office December 7, 1909. On the latter date Lipscomb made entry for the land. The Commissioner held her entry for cancellation as to the S. ½ SE. ¼, Sec. 16, on the ground that prior to the act of August 9, 1912 (37 Stat., 267), a settlement right to unsurveyed land could not attach to more than 160 acres, citing as authority for his action departmental decision in Cate *v.* Northern Pacific Ry. Co. (41 L. D., 316). The latter decision was overruled in the later departmental decision of Northern Pacific Ry. Co. *v.* Morton (43 L. D., 60), and for the reasons stated in that decision the Commissioner's decision in this case, in so far as it relates to the S. ½ SE. ¼, sec. 16, can not be sustained under authority of the case so overruled. However, it appears that the land was surveyed in the field between November 26 and December 3, *1908*, and that the enlarged homestead act was not passed until February 19, 1909, and Lipscomb did not extend her settlement claim to the S. ½ SE. ¼, sec. 16, until May 1, 1909. Under the law as hereinafter set forth settlers can not acquire rights upon school sections after survey in the field, and upon this ground the Commissioner's decision must be sustained as to said S. ½ SE. ¼.

It appears from the record that the State of Montana, on August 26, 1912, filed in the Havre local land office its indemnity school selection list 016144, tendering as basis for said selection the said SW. ¼ and S. ½ SE. ¼, sec. 16. In his decision of January 12, 1914, the commissioner said:

"It appears to be settled that a State may not at will waive its right to school land in place and take lieu land of equal acreage. * * * The question of the availa' ility of certain parts of the land mentioned, as base for the selections mentioned, will hereafter be passed upon by this office."

The act of Congress of Fe' ruary 22, 1889 (25 Stat., 676), to enable the people of Montana, North Dakota, South Dakota, and Washington "to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States," provided that—

"SEC. 10. That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thiry-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

"SEC. 11. * * * and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether *surveyed* or *unsurveyed*, but shall be reserved for school purposes only."

Thereafter, on February 28, 1891 (26 Stat., 796), Congress passed an act amending sections 2275 and 2276, Revised Statutes, which act is in part as follows:

"Where settlements, with a view to preemption or homestead, have been, or shall hereafter be, made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be su' ject to the claims of such settlers; and if such sections or either of them have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by preemption or homestead settlers."

The report of the Committee on Public Lands of the House of Representatives upon the bill last mentioned recites and adopts a report previously made to the Senate as follows:

"In the administration of the law, it has been found by the Land Department that the statute does not meet a variety of conditions, whereby the States and Terri-

tories suffer loss of these sections without adequate provision for indemnity selection in lieu thereof. Special laws have been enacted in a few instances to cover in part these defects with respect to particular States or Territories, but as the school grant is intended to have equal operation and equal benefit in all the public land States and Territories, it is obvious the general law should meet the situation, and partiality or favor be thereby excluded. * * * The bill as now framed will cure all inequalities in legislation; place the States and Territories in a position where the school grant can be applied to good lands, and largest measure of benefit to the school funds be thereby secured."

Considering the acts of February 22, 1889, and February 28, 1891, *supra*, the Secretary of the Interior, in instructions issued April 22, 1891 (12 L. D., 400), held that the grant of school lands to the States mentioned in the act of February 22, 1889, must be administered and adjusted under the provisions of the later general law of February 28, 1891. They have been so administered from that date to the present time and have been the subject of published decisions of this department in the cases of State of Washington *v.* Kuhn (24 L. D., 12), Todd *v.* State of Washington (24 L. D., 106), Noyes *v.* State of Montana (29 L. D., 695), instructions of August 9, 1904 (33 L. D., 181), Schumacher *v.* State of Washington (33 L. D., 454), and State of South Dakota *v.* Riley (34 L. D., 657).

In the latter decision it was observed:

"Reservations are not infrequently made of unsurveyed lands. Before survey what lands passed to the State by its grant are impossible of identification. It has always been the rule of construction of school land grants to the States that the right to any particular tract of land is not fixed until the grant is identified by the approval of the plats of survey.

" * * * Congress knew of this established rule of construction, and had it intended that a different rule should apply to the grant here in question it would presumably have so declared in unequivocal terms. That the grant was not one of the specific tracts, but of quantity to be filled from certain sections, if undisposed of before survey, and was subject to amendment and change by later legislation, was early held by the department, and that construction has been adhered to."

After citing the instructions of April 22, 1891, *supra*, and other decisions of the department and of the courts, the Secretary concludes:

"As the words 'surveyed or unsurveyed' nowise enlarged the grant beyond what similar acts without them have always been held to pass, the decision is applicable to the present case, and it is held that under the grant in question the State of South Dakota takes no vested interest or title to any particular land until it is identified by survey, and that prior to such identification the grant, as to any particular tract, may be wholly defeated by settlement, the State's only remedy in such cases being under the indemnity provision of the acts of 1889 and 1891, *supra*."

In the absence of conclusive provisions to the contrary, it must be assumed that Congress did not intend to withdraw from settlement and development under the homestead laws all of the then large unsurveyed areas in the four western States named in the act of 1889: also that, as stated in the report of the Committees on Public Lands, in connection with the act of February 28, 1891, *supra*, it intended to place all of the States and Territories containing public lands and to which grants had been made for school purposes in a similar position, entitled alike to the benefits and conditions imposed by the act of February 28, 1891. The lands in the said States, unsurveyed on February 28, 1891, had not been identified, and the right or title of the States thereto had not attached under the grant of 1889.

In this situation Congress saw fit to provide that in such cases, where settlements, with a view to preemption or homestead, had been or should thereafter be made before survey of these lands in the field, the settlers should be protected and their claims allowed to be perfected under the laws applicable, the interests of the State being cared for by provision for the selection of other lands of equal acreage in lieu thereof.

As already stated, the department has so construed and administered the acts in question since their passage. The State of Montana has acquiesced therein, and in this particular instance has already selected lands in lieu of those covered by Lipscomb's homestead claim. Furthermore, Congress has acquiesced in the construction placed upon said laws by this department for a period of 24 years. In fact, the action of Congress has in this instance exceeded mere silent acquiescence, for in the case of the State of Utah, admitted into the Union under the provisions of the act of Congress of July 16, 1894 (28 Stat., 107), it provided with respect to four school sections in place in each township granted to the States, that such lands "shall not be subject to preemption, homestead entry, or other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be surveyed for school purposes only."

Congress, by an act approved May 3, 1902 (32 Stat., 188), provided that—

"All the provisions of an act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes, be, and the same are hereby, made applicable to the State of Utah, and the grant of school lands to said State, including sections two and thirty-two in each township and indemnity therefor, shall be administered and adjusted in accordance with the provisions of said act, anything in the act approved July sixteenth, eighteen hundred and ninety-four, providing for the admission of said State into the Union, to the contrary notwithstanding."

When the latter measure was pending before Congress the Public Lands Committees of the House and Senate, after quoting from the Utah enabling act, reported in part as follows:

"Prior to February 28, 1891, the States of North and South Dakota, Montana, and Washington were admitted into the Union with provisions in enabling act similar to the provisions of section 6 of the act of July 16, 1894, just noted. On February 28, 1891, an act of Congress was passed (26 Stat., 796), which provides as follows: * * * This act was enacted to provide a uniform rule for all the States in the selection of indemnity school lands and is more liberal in its provisions to the States than section 6 of the enabling act of Utah, heretofore quoted. That section was evidently taken from the enabling act of some State admitted into the Union prior to 1891, and the comprehensive provisions of the act of February 28, 1891, were evidently overlooked in approving the Utah enabling act. The Commissioner of the General Land Office in reporting upon this matter says: 'I perceive no reason why the State of Utah should not be permitted to make its selections as other States. For administrative reasons the grants to the several States should be uniformly adjusted.' The bill in question will accomplish this result by making applicable to the State of Utah the provisions of the act approved February 28, 1891, above quoted."

In the act of Congress approved June 20, 1910 (36 Stat., 557), looking to the admission of the States of New Mexico and Arizona into the Union and granting lands to said States for the support of schools, Congress specifically provided that the provisions of the act of February 28, 1891, *supra*, amending sections 2275 and 2276, Revised Statutes, should be applicable to the future States.

From the foregoing it is apparent that Congress intended and has directed that the grant of school lands in place to the State of Montana and the other States named in the act of February 22, 1889, *supra*, shall be administered and adjusted as are the grants to other States, under the provisions of sections 2275 and 2276, Revised Statutes, as amended by the act of February 28, 1891, *supra*.

In the case of Butte City Water Co. *v.* Baker (196 U. S., 127), the court held:

"Finally, it must be observed that this legislation was enacted by Congress more than thirty years ago. It has been acted upon as valid through all the mining regions of the country. Property rights have been built up on the faith of it. To now strike it down would unsettle countless titles and work manifold injury to the great mining interests of the far West. While, of course, consequences may not determine a decision, yet in a doubtful case the court may well pause before thereby it unsettles interests so many and so vast—interests which have been built up on the faith not merely of congressional action but also of judicial decisions of many State courts sustaining it, and of a frequent recognition of its validity by this court. Whatever doubts might exist if this matter was wholly *res integra*, we have no hesitation in holding that the question must be considered as settled by prior adjudications and can not now be reopened."

See also in this connection cases of St. Paul, Minneapolis and Manitoba Railway *v.* Donohue (210 U. S., 36), Hastings and Dakota Railroad *v.* Whitney (132 U. S., 366), and Barnard *v.* Ashley's Heirs (18 How., 43).

In the case of the United States *v.* The Midwest Oil Company *et al.*, decided by the Supreme Court February 23, 1915, the court, after citing various rulings of this Department and of the court upon the subject involved in that case, said [236 U. S., 459]:

"It may be argued that while these facts and rulings prove a usage they do not establish its validity. But government is a practical affair, intended for practical men. Both officers, lawmakers, and citizens naturally adjust themselves to any long-continued action of the executive department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation.

"This principle, recognized in every jurisdiction, was first applied by this court in the often cited case of Stuart *v.* Laird, 1 Cranch., 299, 309. There, answering the objection that the act of 1789 was unconstitutional in so far as it gave circuit powers to judges of the Supreme Court, it was said (1803) that, 'practice and acquiescence under it for a period of several years, commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction. It is a contemporary interpretation of the most forcible nature. This practical exposition is too strong and obstinate to be shaken or controlled.'

"Again, in McPherson *v.* Blacker, 146 U. S., 1 (4), where the question was as to the validity of a State law providing for the appointment of presidential electors, it was held that, if the terms of the provision of the Constitution of the United States left the question of the power in doubt, the 'contemporaneous and continuous subsequent practical construction would be treated as decisive' (36). Fairbanks *v.* United States, 181 U. S., 307; Cooley *v.* Board of Wardens, 12 How., 315."

The department therefore adheres to its long-continued and uniform rulings to this effect, and the decision of the Commissioner of the General Land Office is modified. The homestead entry of Fannie Lipscomb will be held intact and her final proof accepted if otherwise regular as to the SW. ¼, sec. 16, and the indemnity school selection filed on behalf of the State of Montana in lieu of the lands so settled upon and entered will be approved, if in other respects found to conform to the requirements of the law. As to the S. ½ SE. ¼, sec. 16, the homestead entry must be canceled, for the reason hereinbefore set forth, and the State school indemnity selection in lieu thereof rejected.

Mr. FINNEY. Then on page 94 of the record is a copy of a letter from Mr. Comyns, an attorney at law, of Seattle, Wash., with reference to the applications for lands embraced in pending State selections; and in connection with that letter, I would like to introduce a letter upon the subject, addressed by Secretary Lane to Representative Kent, dated February 12, 1916, which set forth the decisions of the department on that point.

The CHAIRMAN. Without objection, that letter will be incorporated in the record at this point.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, February 12, 1916.

MY DEAR MR. KENT; I have yours of February 2, 1916, inclosing communication from Mr. E. Lyders, of San Francisco, Cal., and asking to be advised as to the departmental practice in the matter described by Mr. Lyders.

It appears from his communication that he represents a number of persons who tendered applications under the timber and stone act of June 3, 1878, for lands now embraced in pending State indemnity school selections; that some question has been raised as to the validity of the base land tendered by the State, and that the pending House resolution No. 15 and S. 2380 would remove the doubt as to the validity of the base and permit the selections, if otherwise regular, to pass to approval and patent. Mr. Lyders's contention appears to be that as his clients tendered application prior to any such validating legislation their alleged rights should not be destroyed or defeated.

The practice of this department in such matters is well settled and of long standing. No rights are acquired by the tender of an application to enter lands which are embraced in pending uncanceled entries or selections of record, even though such entries or selections may have been erroneously allowed. The syllabus in the case of Santa Fe Pacific Railroad Co. *v.* State of California (34 L. D., 12) states the rule in the following language:

"Pending the disposition of a school indemnity selection, even though erroneously received, no other application including any portion of the land embraced in such selection should be accepted, nor will any rights be considered as initiated by the tender of any such application."

Among other departmental decisions supporting this view may be cited: 32 L. D., 395; 29 L. D., 29; 19 L. D., 467; and 16 L. D., 199. In speaking of the rule adopted and followed by the Land Department in this respect, the Supreme Court of the United States in Holt *v.* Murphy (207 U. S., 415), said:

"Such a rule, when established in the Land Department, will not be overthrown or ignored by the courts unless they are clearly convinced that it is wrong. So far from this being true of this rule we are of opinion that to enforce it will tend to prevent confusion and conflict of claims."

Within the past two years this department has rejected a very large number of filings and selections tendered for lands embraced in pending entries and selections of various kinds. If the rule were otherwise, it would be almost impossible to administer the public-land laws, and it is quite probable that thousands of applications would be tendered and rights claimed to have been initiated for lands embraced not only in pending entries and selections, but in reservations made for various public purposes and uses.

Mr. Lyders's letter is herewith returned.

Cordially yours,

FRANKLIN K. LANE.

Hon. WILLIAM KENT,
House of Representatives.

The CHAIRMAN. Yesterday it was arranged that we should first hear from the attorney general from California, and next hear from the attorney general of Idaho; for at that time they were the only nonresident persons that we knew of who wanted to be heard upon this bill. There may be others here this morning, and if there are, we will hear them as soon as we can.

Mr. MONDELL. Mr. Chairman, I have a committee meeting this morning. I want to be heard on this bill. Our land commissioner is not here. If you have other persons to be heard this morning, and and it will take the entire session of the committee to hear them, I would like to leave at this time to attend a committee meeting.

The CHAIRMAN. I think you are quite safe in doing so, Mr. Mondell; I knew that you wanted to be heard, and that the land commissioner of your State wanted to be heard.

Mr. MONDELL. All right.

Mr. RAKER. Mr. Chairman, I wish to introduce Mr. Webb, the attorney general of the State of California.

STATEMENT OF HON. U. S. WEBB, ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA.

Mr. RAKER. Will you state your name and position, please, Mr. Webb?

Mr. WEBB. My name is U. S. Webb, and I am attorney general of the State of California.

This measure, I understand, was taken up by the committee some days ago, and the California situation was then rather thoroughly presented, and I understand that some changes have been suggested by the respective departments in the bill since then. At that time the complaint of California against the bill was mainly that it provided for approval of selections in the exterior limits of forest reserves, if found regular at the date of approval, which obviously would militate very strongly against the State's interests; but the Secretary of the Interior has communicated with the committee, I understand, suggesting the evident injustice of that provision, and in lieu thereof suggested that the bill be amended so as to authorize the approval of the selections if regular at the date of the selection. The significance of that proposition and that change is found in this, that these selections were made somwehere from 12 to 14 years ago, up to 25 years ago. They were selected, of course, under the conditions then existing, and under the limits of reservations then existing; but since the selection of these lands the forest reserves have either been created anew or the boundaries of the forest reserves have been extended, so that 70,000 acres of the lands then selected have been

included within the limits of forest reserves; and if the bill should provide for the approval of those selections if regular at the date of approval, the 70,000 acres selected at a time when they were not included within the reserves would not come under the bill, and the State or the purchasers would absolutely lose that.

I understand that the departments are practically agreed that that amendment should be made; and that that amendment and some further changes that will be suggested by others interested in the matter has already been taken up with the department, relative to the preservation of the rights existing under the legislation of 1912, and, further, under the provisions of another bill now before Congress. As to the surface rights, there should be some language in this bill to show that it was not intended to affect the provisions of the 1914 bill, giving to the State surface rights, or the right to select the surface title of lands withdrawn for minerals, etc.

The bill endeavors to deal, as I understand it, with the situation existing with reference to the school lands in all the States. I heard yesterday the attorney general from Idaho speak very entertainingly and very interestingly of the situation in Idaho, and also in one of the Dakotas, I believe; and the bill covers the situation, with some amendments that he suggested, that exists there; but the situation there is entirely different from the situation in California; we have nothing to correspond with that.

California's situation arises under a different provision of law, and evidently under a different practice. The school land grant was made in the early fifties; and the additional grant providing for the exchange of lands, or lieu land act, in 1891. The State had provided under the law from the time of the grant up to the time following 1891 without difficulty and without conflict, and, in fact, it was not known that there was any difference existing between the State and the department at Washington until about 1903, when the department communicated with the surveyor general's office, calling attention to the fact that the State had gotten, as it was expressed to them, some 6,000 acres more land than it was then entitled to.

This, gentlemen, does not imply that the State had gotten lands in excess of the total acreage of the grant; it means only that the State had gotten lands in the townships in which selections had been made in excess of the acreage that should go to the State from those particular townships. The State has not yet selected all the lieu lands it is entitled to. In fact, several hundred thousand acres yet remain. But the adjustments are made by townships, on the theory that the grant was a township grant, conveying to the State under the original grant, not always two sections of land, but an acreage equal to the normal acreage of two sections in each township, namely, 1,280 acres.

The question of course arises, How did this excess occur, and it would simply have occurred in two or three ways: One, the State had submitted base selections for certain mineral lands that had been accepted, and through an error in the land department there, the same section that had been selected as base, or a part of it, had been sold in place. Thus, the State had gotten a base allowance, and had sold in place the land, which would increase the acreage. Then there was another source of difference. We have some Spanish grants out there, and in one of them, under the early surveys, it was under-

stood that there were some 7,000 or 8,000 acres of school lands included within the exterior limits of that survey. The State assigned those 7,000 or 8,000 acres as base, it was allowed, and under a resurvey the school lands fell short by the 7,000 or 8,000 acres; and while the State had gotten base for it, yet it was included within the resurvey of the Spanish grant, and then belonged to the State without question; and the State then sold it in place, thus having gotten a lieu land acreage of 7,000 or 8,000 acres and sold it in place. That was an excess.

However, it was represented by the department about 1903, that the State had an excess of some 6,000 or 7,000 acres, and it grew to a very much larger amount upon further examination; and it was suggested that listings would not proceed, or would be withheld, until that was adjusted. The listings had been kept up closely until that time.

The surveyor general's office of the State and the department in Washington began an investigation, and it was soon found that the excess of listings was greater than that first represented. It was found also that some of the excess was prior to 1877, and some subsequent to that year. The act of 1877, was contended by the State, and up to that time had generally been construed, to be an additional grant of lands overlisted to all the States prior to that time. However, in an effort to adjust the matter, to close the matter, in 1907 representatives of the State, by arrangement with the department, came on here and had a conference with the Interior Department—Secretary Garfield was then in charge—and a tentative agreement was arrived at whereby the State was to make good the difference, supposed to be 6,000 acres of shortage, But it was understood that the investigation should continue, and if other shortages were discovered, they also would be made good.

Those investigations did continue, and the amount grew. However, before an adjustment was closed, there was a change in the department. Mr. Garfield's successor came in. The matter was continued, and the amount of overlistings subsequent to 1877 was ascertained definitely to be about 12,000 acres; and it was then agreed by the department that the State would first pass appropriate legislation authorizing the proper officials to convey to the Federal Government by patent an amount of land sufficient to cover this overlisting. That was done, and in accordance with such local legislation and such agreement had with the department, the State executed its patent to the Government for 12,000 acres, then ascertained to be the total amount of shortage since 1877, except the 7,000 or 8,000 acres in the Spanish grants which I have mentioned.

It was definitely arranged that, when they opened the reserves and proceeded to list in the reserves, the State would assign 7,000 or 8,000 acres in base situated in a forest reserve to cover this 7,000 or 8,000 acres in the Spanish grants; and there was then and is now no question as to the propriety of that course or the fact that that would be done when we assigned such base in reserves.

The patent was prepared, and after some correspondence, two or three different patents were prepared, as a matter of fact, because the department insisted on certain provisions which the State did not incorporate; but eventually the third patent came on, the

department said it was acceptable, sent it back for record, and it was recorded and returned.

Now, at the time it was agreed that this patent would be given by the State it was without equivocation agreed by the department and the State that upon the making of this patent the department would proceed with the listing of the balance of the school lands due the State; but after the patent was received, and before any considerable portion—they did start to act upon this agreement, and I think some 20,000 acres were clear-listed; but about that time another change in the administration occurred, and Secretary Fisher then came in, and the surveyor general and myself came on to Washington to take up the matter with the new Secretary. We had every confidence in the new Secretary, because he was one of us Progressives, and we knew that now all we had to do was to come on to Washington and get our lands; and we were assured that everything would be all right; and we came in high hopes, and got in to see the Secretary, who told us, properly and without discussion, that he had considered the matter and that the lands would not be listed until California had made good for the overlisting prior to 1877. "But," we said, "Mr. Secretary, under a fair construction of the law, we are not legally obligated for any claim prior to 1877; the effect of that act was to cut off all claims prior to that date; it was passed for that purpose, and has been so construed by the department and by everybody else since; and we do not want to pay for that." But he said: "I have considered the matter, and you must pay for the land prior to 1877, or we will not list any land to California."

Well, you can imagine, gentlemen, that that was somewhat of a shock to us, who had come here with such hope and expectation, particularly because of the change in the department. And, furthermore, we then called to his attention the positive agreement, that was evidenced in writing, had with Secretary Garfield, and had with Secretary Ballinger, and the very considerable number of letters received from both of those gentlemen while in that position stating that when California had conveyed by patent this 12,000 acres in satisfaction of the old listing subsequent to 1877, the department would then proceed to list the balance of the lands to the State, reserving only sufficient to cover this deficiency that I have spoken of. We tried to read those letters to him, but he said, "I do not care for them;" we said, "We want to read them;" and he said he did not want to hear them. Naturally, that being the attitude of the Secretary, we did not read them; you will thoroughly appreciate that.

We suggested also that we felt that the obligations of the Government, as expressed and entered into by previous administrations of the department, were binding; and we were informed that the department then did not so regard them, and that they would not be bound by the agreements entered into under previous Secretaries.

That was a rude shock to us and a rude awakening; and we argued, or endeavored to argue, as to the legality of the proposition. We did later write our views concerning the legality of the claim, relative to the overlistings prior to 1877; but the demand was insistent and unmodified, and insisted upon, that nothing would be done unless that overlisting was made good. We did not then believe, and do not now believe, that there was any legal obligation upon the State, or upon any State; we believe the act of 1877 was intended and operated

as a curative act. But California had at that time some 300,000 acres of tentative lieu selections held up by the department; and the department said to us, "Unless you pay for that land overlisted prior to 1877, we will not list a single acre." We did not believe in the justice of the suggestion, but we were helpless; it was "ours not to reason why, ours but to"—pay. And we paid. The legislature of the State of California appropriated the money—it was ascertained that $1.25 an acre for the overlistings prior to 1877 would amount to $23,000; and the legislature of the State, after expressing their views, of course, as legislatures will, of the legality or illegality of the proposition, or the justice of the proposition, appropriated this money; and the State sent a warrant to the Secretary of the Interior for $23,000, in payment of the overlistings prior to 1877. That was accepted, and the money collected, and the Government has the money.

Then we said, "We have now acceded to every demand made by the Government, and will get our lands; we have patented to the Government 12,000 acres to cover the period since 1877, and we have deposited $23,000 to cover the period prior to 1877; and now we will get our lands." But the lands did not come——

Mr. RAKER (interposing). Did Mr. Fisher give you a hearing after that?

Mr. WEBB. Mr. Fisher gave me a hearing, even the first time I was here—a sort of one-sided hearing; I had to tell Secretary Fisher why we came; we were told by the governor to see him; I had asked the governor what sort of a man the new Secretary of the Interior was, and the governor, being a good Progressive, told me that he was a splendid man; and I told Secretary Fisher that that was the guarantee under which I had come, and that we had not had that hearing.

But we never did get the hearing, though in the course of correspondence—we paid the money, the money was accepted, and all letters touching the payment of the $23,000 were courteous, and the receipt for the money was in due form; so no conflict occurred there. We had paid to them all the land or money that was claimed against us.

But, somehow, the listings, when made—I think it was in Ballinger's administration—this phrase grew into the correspondence, that "When you have furnished the title to the 12,000 acres the listing of these lands will go forward as rapidly as the limited clerical force will permit." That is an expression that doubtless some of you have heard; and that ran through the correspondence. After we had paid our money, and also given the lands, then the promise was that "as rapidly as the limited clerical force will permit we will clear-list these lands." Some of them came; it occurred very slowly.

Then, in order to meet the situation in California—the lands had been sold out there for $1.25 an acre, in the ordinary method of selling school lands; you would file on the lands and pay 20 per cent of the price and the interest on the balance until you wanted to pay the principal. Then the surveyor general conceived the idea, and a very proper one, that our lands were worth more than $1.25 an acre, and that the law ought to be changed accordingly; and in 1909 the law was changed, providing for the sale at public auction of the scrip represented by surveyed school sections within forest reserves and

withdrawing such lands from sale otherwise. The success of that method is shown by the fact that at such auctions the school lands or lieu lands were sold at $5, $6, $8, and even $10 an acre, whereas before that they had been sold at $1.25 an acre and the school fund depleted accordingly.

Now, the situation was this: These lands did not come, and during the pendency of this withdrawal bill filings were attempted, and when Mr. Fisher was succeeded by a Californian as Secretary of the Interior we said, "Well, we missed it somewhat upon the Progressive; but now we have one of our own people there, things are all right, the sky is clear, and the sun is shining again; we will go to Washington and get our lands; of course, there is no question about that." We knew the Secretary and knew that he was capable and big and one of the most genial gentlemen that could have been selected for the place, and that he was well informed on the local situation. And with some considerable joy Mr. Kingsbury and I made a pilgrimage to Washington, and we saw Mr. Jones, the Assistant Secretary, and had a very long conference with Mr. Jones; and we saw Secretary Lane and had a very short conference with Secretary Lane. We were very affably treated, and it was admitted, as, indeed, it had been by the predecessors of Secretary Lane, that the situation ought to be adjusted; that California ought to get these lands—and the lands meanwhile had grown to 300,000 acres held up. "But," Mr. Jones said, "there is this Lake claim to some of your lands. How about this Lake claim?"

Well, you see, something else had arisen. We said, "Well, what is wrong with the Lake claims?" "Well," said he, "Mr. Lake has filed, or attempted to file, in the surveyor general's office of California claims for 200,000 acres situated in the forest reserves." We said, "Yes; he did file those applications, but the surveyor general did not accept them." During the pendency of the bill withdrawing school lands that same Lake filed applications for 200,000 acres. I say, for convenience, that Mr. Lake filed them. Of course, we are all familiar with school-land matters and know what that means; he procured his friends and agents to file applications for the lands.

The CHAIRMAN. Please elaborate that a little, Mr. Webb.

Mr. WEBB. All right. I may be passing over this a little too rapidly; but if I do I know that it will be acceptable to you as a very satisfactory fault. I tried to talk with the Senate committee yesterday, and the time ran out so rapidly that I found that they were about through when I got to the really important propositions that I wanted to present.

The so-called Thompson bill—that is referred to in the record, Mr. Chairman, that you mentioned this morning; and it was said in there that the Thompson bill was passed to meet the situation arising as a result of the decision in Hibbert *v.* Slack. That is an error, and Mr. Finney, I am sure, will recognize that; the Thompson bill was not passed to meet any decision; it has not any relation to that. The Thompson bill was passed to change the method of disposition of California school lands so that we would get more money for them; so that we would get their value for them; that is all. Now, while that bill was pending Mr. Lake conceived the idea that as the department was not listing the lands——

Mr. TAYLOR (interposing). Who is Mr. Lake?

Mr. WEBB. Mr. Lake is a California school-land operator, that is all; just an individual out there, a sort of land attorney.

Mr. TAYLOR. A promoter, or something of the kind?

Mr. WEBB. No. He is a very shrewd chap, who finds out where school lands and lieu lands are situated, and he knows a good deal about the law; he has a convenient retinue of applicants and knows where to get them; and if there is any land in the State to be had by filing on it, he is usually "Johnny-on-the-spot."

Mr. TAYLOR. Hs is a locator?

Mr. WEBB. He is a locator, practically, and he has gotten enough people together who had a right to file on school lands to tender these filings. The applications were presented to the surveyor general and the surveyor general refused them, saying, "These lands have been selected by the State of California and submitted to the Federal Government as bases for lieu selections; they are not open to filing, because they are otherwise appropriated." "But the selections have not been approved," said Lake. "That has not anything to do with us," said the surveyor general, "the State has complied with the law, has made the selections, has forwarded them to Washington, and they are pending for approval in the department."

Mr. RAKER. In other words, there was a prior selection by the State?

Mr. WEBB. There was a prior appropriation by the State; and so they declined to accept these applications by Mr. Lake. Well, that situation went along; and I think that was the situation—perhaps the suits had not been begun—when we came to Washington in the matter; and the department officials said, "Here are these Lake selections; what about them?" But we had looked carefully into the matter, and were entirely satisfied that there was no legal difficulty in the way; we were entirely satisfied that the view taken by the surveyor general was correct. And we advised the department to that effect; but, strange as it may seem, that advice did not seem to satisfy the department; they said, "Clear up the Lake selections; remove them."

Lake had commenced in the meantime, or commenced shortly afterwards, mandamus proceedings to compel the filing of those applications. The lower court held that the lands had been already appropriated and dismissed the action. Lake appealed to the district court of appeals; the case was reheard there and the same decision followed. Later, upon an application to the supreme court of the State, a rehearing was denied, thus finally closing the Lake incident.

The CHAIRMAN. That became final, did it?

Mr. WEBB. That became final, denying Lake's rights, and thus closing that matter.

Mr. TAYLOR. In the State court?

Mr. WEBB. In the State court; and there was no Federal question involved and no claim of any, so that it will not reach the Federal courts.

Mr. RAKER. So that all the statements that have been made heretofore about the Lake claims have been disposed of finally?

Mr. WEBB. I am glad you mentioned that, and I have no doubt that the committee have heard of the Lake claims and the Lake claimants.

Mr. RAKER. Yes.

Mr. WEBB. They have been effectually and completely settled by this line of decisions.

The CHAIRMAN. There is no lingering claim of any kind?

Mr. WEBB. None whatever.

Mr. TAYLOR. Have you satisfied the Interior Department?

Mr. WEBB. Yes; that satisfied the Interior Department. Mr. Finney, that closed that question, did it not?

Mr. FINNEY. Yes.

Mr. WEBB. Now, they said, "Get rid of the Lake claims"; and we got rid of the Lake claims——

Mr. LENROOT (interposing). I would like to know just what the grounds of the decision were in denying the application by Lake for a mandamus. What I desire to know is whether it was denied upon the ground that title to those lands in place did not pass to the State of California, or whether it was on account of the action of the California Legislature?

Mr. WEBB. No; that was not decided in that case, nor touched upon in that case.

Mr. LENROOT. Nor was it raised?

Mr. WEBB. Nor was it raised. There was another case out there where that was mentioned in the opinion, but not in that case. They held, practically—or the decision of the court rested upon this proposition—that the surveyor general had a reasonable time in which to examine these applications; before the time at which he would have been required under the law to file them had arrived, the law withdrawing them from that character of sale, or from entry and sale by that process, had been repealed and the new act had become effective. There was nothing involving the general school-land question, or lieu-land question, decided in this particular case.

Mr. TAYLOR. Has that decision been put in the record?

Mr. WEBB. The Lake decision?

Mr. TAYLOR. Yes.

Mr. WEBB. That has not been put in the record.

Mr. TAYLOR. Would it not be a good idea to insert that in the record of the hearings?

Mr. WEBB. We can have it put in the record, but——

Mr. RAKER. There are none of those claimants here?

Mr. WEBB. No; there are none of them here.

Mr. RAKER. All of those letters, etc., have been withdrawn?

Mr. WEBB. Yes.

Mr. TAYLOR. Well, in view of Mr. Lenroot's question, I thought that if there was anything he had in mind as to the effect of that decision it might be well to have it in the record.

Mr. LENROOT. The Supreme Court of California wrote no opinion?

Mr. WEBB. No; they denied the application, but wrote no opinion, as I remember; I am quite sure I am correct on that; it simply denied it without opinion. I will say that, from the attitude of the courts in the Lake cases, that was regarded as the narrow question involved; and there was no doubt felt that the surveyor general's action was proper; they treated it as such, and did not go into the larger questions involving the lieu land titles.

Mr. TAYLOR. Has Mr. Lake been coming here to Washington and been active in attempting to forward his claims?

Mr. WEBB. Not now; he was active in coming here before the suits had been decided against him; he is quieter now.

Mr. BAKER. I might say that Mr. Lake, I suppose, has letters to the members of the committee and to Members of Congress, generally. And I understand at this time that all he asks is that all the matters the attorney general of California is contending for be affirmed; in other words, that the parties be allowed to have their applications approved, if legal at the date of application, instead of if legal and regular at the date of approval.

Mr. WEBB. It was suggested by some one at a former hearing that notwithstanding the failure to list these lands, California continued to sell. There is nothing mysterious in that; California had to sell—that was the law. And we never expected in 1906 that the year 1916 would arrive with the controversy unsettled. We do not know; we live a long way from Washington; we are away out West, and we have an abiding faith in the eternal justice of things and it never occurs to us that what is properly due us from Washington will never come. It never occurs to us that it will take 16 years to get some land we are entitled to. We are always looking forward there; we are hopeful, and the stars are bright, and we say, "Whatever we are entitled to we will get quickly." No man would have dreamed that it would require up to the present time to get these lands clear listed.

The situation is now, that we have 320,000 acres of land held up. Those lands are not subject to taxation. Perhaps the taxes on those lands if they were titled—and the title passes with approval by the department—perhaps the taxes would amount to $100,000 a year. And that is not the saddest part of the story; the title of those lands is held in abeyance, and a great deal of that acreage is agricultural land, subject to improvement, subject to development and to settlement. Extensive improvements will not be made; the land will not be utilized to its full capacity until title is obtained. It is a vast area. And there is no claim of the department against these lands; our troubles with them are practically adjusted. Some of the departments, I know, are somewhat jealous as to the forest rights and the water rights and the mining rights. We do not want any of that stuff; we simply want the lands listed to us that are found regular, and of the class to be listed, at the date the selection is made. But we do feel that it would be most unjust to clear-list those lands that are subject to selection at the date of approval, because since the date of selection the forest reserves in California have grown enormously.

I am not here to express any view of approval or disapproval of the forest reserve policy; but I am here to suggest to you that California has 99,000,000 acres of land, 155,000 square miles of area; and that one-third of the total area of that State is included within the exterior limits of forest reserves; one-third of the entire area of the State. Some people may think that a forest reserve is a bully thing, and some may think it is not. But it does seem inconvenient, when its exterior limits include farms, homesteads, mines, mills, towns, and cities; it is a little inconvenient when its lines run around a whole community that has been settled for 60 or 70 years. And to suggest now, that because these lands have been held for 20 or 25 years by the Federal Government, and because the forest reserves have been extended and new reserves created, you can not get the land you applied for, because, forsooth, since you filed your application we

have disqualified those lands, is a manifest injustice. We say that the lands submitted as base at the date of the selection, if in other respects found regular, though included within the exterior limits of reservations, should be assigned to us now.

And we believe, that while the bill was drawn on the other theory, we understand that the departments interested have realized that that should be done. You can readily conceive the situation where the opposite view would leave us. If the lands in place are not subject to be offered as bases, we are indeed helpless, because the school sections in place within the exterior limits of forest reserves can not be sold. Why? Because private ownership of lands within the exterior limits of forest reserves is not desirable; that is why. It is the policy of the department, and proper; if we are going to have reserves at all, I say all reserves should exclude from their limits every acre of privately-owned property; and such legislation should be passed as would enable the department to exchange lands outside of the forest reserves for the privately-owned lands within the forest reserves. It is impossible to carry on a farm; it is impossible to carry on a stock ranch, or to carry on any private enterprise within the exterior limits of forest reserves without constant inconvenience, constant annoyance, and constant expense. Hence, the forest reserve can be defended only if it includes all within it, and then it is practically set apart.

If we can not assign these lands as base, we can not use them at all, because there are not purchasers for these lands in place while they are in a forest reserve. As to the right to assign lands in place as bases for lieu selections of Government domain, I do not believe, under the experience of the departments, that there can now remain a legal question. I am not unmindful of the question that might have arisen upon the construction of the act of 1891, immediately after its passage, but the department assumed to construe that act as authorizing the exchanges, and there was, I think, early after the act was passed, a ruling that it did not so authorize; but that view had obtained but a short time when the department took the other view and continued to accept surveyed bases within forest reserves in exchange, and the question arising anew in 1901, the then Assistant United States Attorney General—now Mr. Justice Van Deventer, of the United States Supreme Court—in a very exhaustive and able opinion, examined that question, and advised the department that such exchanges were within and contemplated by the act of 1891.

And from that time up to 1913, the department, so far as the records show, did not question the correctness of that decision. There was a court decision, however, referred to in your former hearing, Hibbert *v.* Slack, decided in 1897, by the circuit court of the southern district of California, Justice Wellborn rendering the opinion, in an action in which neither the State nor the Federal Government were parties, concerning the claim of one party claiming under a homestead entry and the other claiming under school land provisions—neither of the Governments appearing—holding that the act of 1891 did not contemplate such exchange; that the school land grant was a grant in presenti, covering all surveyed school sections and surveyed base within the forest reserve, belonging to the State and could not be exchanged. Mr. Justice Van Devanter, then Assistant Attorney

General, treating of the decision in Hibbert *v.* Slack, four years after its rendition, said that he did not approve of the reasoning and the department would not follow that decision. The department has never in a single ruling, in a single instance, followed the ruling in Hibbert *v.* Slack, but without exception, for 15 or 16 years, has pursued the opposite course or construction; and I say to you gentlemen, who are lawyers, for the most part, and doubtless good ones, that the rule of departmental construction would doubtless control the courts to-day, when it is pointed out to them that the Department of the Interior and the other departments having to do with the question have given since the passage of the act of 1891 a particular construction to it, and that millions of dollars in value of private property have been built up upon that construction; that the Government has acted upon that construction; that it has dealt with thousands of people in the different States upon that construction; and that rights have become vested under it; the courts will say, as they have oftentimes said, that the rule or practice of departmental construction is controlling; and the court will follow the construction of an act at the time of its passage, and thereafter, followed by the department or departments whose duty it was to construe and enforce the act.

So I believe there could be, as an original question, no doubt as to the proper construction of that act. I have not any doubt that the Department of the Interior has the absolute right, nor have any doubt of its duty to list these lands independent of that question.

But, after we had disposed of the Lake cases and gotten them out of the way, we came back and said, "Now, we want our lands; we have fixed Lake; we have gotten him out of the way; we have given you our money, and we have given you our lands; we have done everything that you asked us to do. Now, we have a bully record list of lands." They said, "Why, we are all ready to list the lands; you have settled the Lake case; everything is all right. In time you will get them, but we have been thinking of this question, and we think there is some doubt as to the department's right to accept surveyed school lands within forest reserves as base." "But," we said, "you have been doing that for quite a number of years—25 years. You have accepted thousands of acres of this land from California; you have accepted it from every school-land State in the Union." "Well," they said, "we do not care what our predecessors did; we have been looking into the question, and we have some doubts"——

Mr. TAYLOR (interposing). Who said that?

Mr. WEBB. The present administration of the Interior Department. This was the particular language of the Assistant Secretary, Mr. Jones. Now, I am running lightly over this thing. Mr. Jones, I know, spent weeks and worked very hard on the question, and he entertains a very earnest doubt as to the correctness of the department's former action, and he is acting in the very best of faith, and I want to say here that, remarkable as it may seem, the controversy has continued between the State and the department in reference to this matter all these years, and there has never been a suggestion, or a belief, on the part of either that there was anything but the very best of faith on the part of all of them, and there has been the very best of feeling. We have been a little piqued sometimes; we have been a good deal disappointed; we have been hurt. Surveyor

General Kingsbury and I were in this thing at the beginning; it was a long time ago; we were young men, then; our step was elastic, our eyes were bright, and we were hopeful, and we said, "We will do something for California." We have continued in the thing all these years, until we are getting old. Our hair is getting gray, and our step less elastic, and we hope that the thing will be finished before we receive the final summons.

Mr. TAYLOR. And you have been complying with their requirements all along?

Mr. WEBB. We have complied with their requirements all along. We have said to them, "It is your ante"—to use western slang—and we have done what they called for every time. Sometimes we have protested and said, "Let this cup pass from us;" but we have complied with every requirement they have ever made. We have paid the money when we thought we did not owe it; we still think we did not owe it. Some of their conditions we thought were severe; but we recognized that they were the masters of the situation. We know how utterly powerless is the poor devil who has to go to any land office, State or national—and that is it must be, because the departments must be the autocrats in their own domain; they have to have that power. But the power has not been used by the departments arbitrarily; there has been something that happened, somehow or other. There is always something happening, and it has always happened, that just as we had complied with one requirement, something else came up.

Now, they say to us, "We can not do anything until this question as to the right to select forest-reserve base is settled, either by court decision or by remedial legislation." Gentlemen, it is a long, long road to a court decision, going through the Federal courts and coming up to the United States Supreme Court.

Mr. RAKER. Secretary Fisher held all along that the department had such right, did he not?

Mr. WEBB. Yes; Secretary Fisher took a fine stand on that; his rulings pleased us in that respect; he never questioned his power.

Mr. TAYLOR. He never questioned his power to do anything, did he? [Laughter.]

Mr. WEBB. Well, I am inclined to agree with you. I do not believe that there ever existed in the mind of that Secretary a doubt as to his power to do anything; but I know as a fact that he did not do anything, and that was what concerned us. We agreed with him that he had the power and we begged him to use it; but it was not used in our behalf. The present Secretary feels that there is a question as to the power and suggested remedial legislation or a court decision.

Now, strangely enough, we have in California, as doubtless you have in some of the other States, individuals who, just about the time you get a thing fixed up, will kick open the bag and spill the beans. We had gotten the case of Hibbert *v.* Slack pretty well worked out, and the department was feeling pretty good in this matter; and then we had a little condemnation suit—the Red Power Co. brought action against the State to condemn a section 16 situated in a forest reserve, for a reservoir site. This was after the act of 1909, withdrawing surveyed school sections in forest

reserves from sale regularly; so the State answered pleading this act of 1909, saying that the section had been withdrawn from sale; the theory being that obtaining title by condemnation proceedings, under eminent domain, was but an indirect form of sale, and therefore was eliminated by that act. We did not care much for the particular section; we wanted a decision; that was all; we did not care whether the power company got the section or not; it was not of great value—or, rather, I think we wanted them to get the section, because it would provide a reservoir site which would result in developing that country. But we said, "We will take a decision on that, and that will settle all questions hereafter." The only question presented in the trial court was as to whether the right to proceed against school sections in eminent domain continued notwithstanding the Thompson Act; the trial court held that it did; I think the trial court was correct. However, the decision of the trial court was not all we wanted; so an appeal was taken to the district court of appeals, and the district court of appeals held with the trial court; it said, "Yes, that is all right; true the lands are withdrawn from sale by the act, but the act did not say they were withdrawn from eminent domain; and the statutes governing eminent domain still apply and they can proceed against the land and obtain title to it by eminent domain."

That was all right. The matter was presented to the Supreme Court; and the Supreme Court practically said that the land was not withdrawn from proceedings under eminent domain and that this proceeding was all right, and they sould obtain title to the land. Then, after they had decided the case, and decided every question ever discussed in it, the justice, who was a very learned gentleman, quite opposed to forest reserves, and quite opposed to conservation of anything, did not quit writing—something like a parrot; he talked too much—and went on and wrote a page and a half or two pages more. And in that page and a half or two pages he talked about the forest reserves and he talked about conservation and the Government's policy of conservation. He said it was all wrong; he said the State owned these lands in the exterior limits of the reserves; that the Government had nothing to do with them. Then he spoke of the act of 1891, and of Hibbert *v.* Slack, and said that the decision in Hibbert *v.* Slack was all right, and that there was no power to exchange school sections in place in forest reserves—questions, gentlemen, I say to you, that were absolutely remote and foreign to the question at issue. But we did not see anything about Judge Henshaw's decision in that case; we thought merely that the justice "slopped over"; but the courts sometimes "slop over."

But, somehow, the department at Washington heard of it. It came across the mountains and across the desert here to Washington, Judge Henshaw's decision in that Power Co. case, and the department said to us, "Here is what your own court decided." "But," we said, "that was not part of the case." "Well," they said, "it is in the opinion, so you will have to dispose of this question." And, notwithstanding the fact that that was not an issue in that case, we had to take out a writ of error and take our appeal to the Supreme Court of the United States, and some time or other that case will be decided; but I do not believe that question will ever be decided by the Supreme Court of the United States in this case. It was not within the issues. Gentlemen, it was so far from the issues that attorneys on neither side saw fit to

discuss it, and you know that when a point is so far from the issues that neither of the attorneys will mention it, it is a long way from the issues in the case.

But notwithstanding that fact, this particular justice, in writing the opinion, discussed the question. But I do not believe the United States Supreme Court will render a decision covering that question; I would like them to; I wish they would.

Gentlemen, California comes to you for relief in this matter; for a bill which will grant relief in all the States. California urges that we are entitled to this relief; urges that the department says to give us this remedial legislation, saying that Congress has approved the exchanges heretofore and authorizing them in the future. We know the department will act if this legislation is passed; and we ask you, with tears this time, do not go home until you have recommended this bill out in such form as will relieve us, and until it is passed by Congress.

The CHAIRMAN. I would like to inquire as to the effect of the bill as introduced. Many of us are not familiar with it; we have been working hard on the Oregon & California land-grant matter, and have not yet gone into this carefully. Does this bill as it stands accomplish what you have in mind?

Mr. WEBB. Not quite—that bill as it stands. You have in the record a letter from Secretary Lane. The bill as it stands provides for the approval if regular——

The CHAIRMAN. Well, I was not going to put you to the trouble of analyzing either the Secretary's letter or the bill; what I was going to ask is, if it is not prepared so as to cover what you want, have you prepared anything that will accomplish what you want?

Mr. WEBB. Secretary Lane has done that.

The CHAIRMAN. And has recommended it?

Mr. WEBB. Has recommended it, in a letter addressed to you as chairman of this committee.

The CHAIRMAN. And that does accomplish what you want?

Mr. WEBB. That does accomplish the main, big thing that we want.

The CHAIRMAN. But that provision is not in the printed bill as it stands.

Mr. WEBB. That is not in the printed bill.

The CHAIRMAN. You do not have a copy of that letter here with you?

Mr. KINGSBURY. Mr. Chairman, I spoke with Mr. Finner, of the Interior Department, this morning; and perhaps that amendment as suggested by the Secretary may have to be changed. Mr. Finney has been working on it, but I understand has not yet worked it out in final form.

Mr. WEBB. It probably will have to be changed slightly, but only in certain features. This amendment, in its general lines, will accomplish the relief desired.

The CHAIRMAN. Is it your desire that the letter from the Secretary should go in the record?

Mr. WEBB. I think that letter should go in; I had assumed that it would. It is dated February 19, 1916, and is a copy of the letter addressed to you, Mr. Chairman.

The CHAIRMAN. The letter from the Secretary will be inserted in the record at this point.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, February 19, 1916.

Hon. SCOTT FERRIS,
Chairman Committee on Public Lands,
House of Representatives.

MY DEAR MR. FERRIS: Reference is made to the request of your committee for report on H. R. 8491, entitled "A bill to amend the act entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated,' and to authorize an exchange of lands between the United States and the several States."

This bill is identical with the tentative draft of the bill submitted to the Committee on Public Lands of the Senate by this department December 13, 1915, accompanied by a report showing in detail reasons for the enactment of the proposed legislation. However, since that time State officials have called attention to the fact that large areas of lands heretofore selected by the States, which selections have not been approved by the department on account of the legal objections which the present bill is intended to obviate, have been included in forest withdrawals and that under the terms of sections 1 and 3 which provide for the approval of selections embracing lands "subject to selection at date of approval," these selections, under which the State has applied to take lands which have since the States' selection been included in forest withdrawals, could not be approved. This according to the representations made to me by the officials of one of the States interested, will, as to that State, render the legislation to a great extent inoperative.

In view of the foregoing, should Congress see fit to do so, this department would interpose no objection to the amendment of section 1 as follows:

"Strike out all of line 14 after the word 'regular' and all of lines 15 and 16, page 2, and insert in lieu thereof, 'and for lands which are nonmineral in character and have not prior to date of approval been withdrawn under the provisions of the act of June 25, 1910 (36 Stat., 847), may be approved under the provisions of said act of February 28, 1891,'"

and to the amendment of section 3 as follows:

"Strike out the words following the word 'confirmed,' in line 3, page 4, down to the proviso, and insert in lieu thereof, 'and all pending and unapproved exchanges of like character if otherwise regular and for lands which are nonmineral in character, and which have not prior to date of approval been withdrawn under the provisions of the act of June 25, 1910 (36 Stat., 647), may be in similar manner adjudicated and approved.'"

In department letter of December 13, above referred to, an earnest hope was expressed that legislation along the line of this bill be enacted in the near future, and I so recommend.

In connection with the amendments suggested by this letter, your attention is called to the fact that there is involved in these amendments the question of disposition of lands within forest reservations, and it is suggested that for this reason the views of the Department of Agriculture should be obtained.

Cordially, yours,

(Signed) FRANKLIN K. LANE,
Secretary.

Mr. TAYLOR. Has a duplicate of this bill been introduced in the Senate?

Mr. WEBB. Yes; they have a duplicate in the Senate.

Mr. TAYLOR. Had the Senate committee acted on it yet?

Mr. WEBB. The Senate committee has not yet acted on it. The Senate committee took it up briefly yesterday for the first time, not closing the hearing, which was adjourned over until Saturday.

Mr. TAYLOR. And did you read to the Senate committee the same letter to the Secretary that you have offered here now?

Mr. WEBB. They had that letter, yes; and they were told that that was considered to cover substantially what was required.

Mr. TAYLOR. Do you understand that the situation of California affects the situation in the other States in any way, so that the other States may be opposed to this form of this bill?

Mr. WEBB. No; on the other hand, I understand that California is not in disagreement with them at all, and that what this bill grants as to them may be done without affecting the California situation; that the bill fits the varying conditions in the different States.

Mr. TAYLOR. It is broad enough for California, do you think?

Mr. WEBB. Yes, sir.

The CHAIRMAN. Each State has its own problems?

Mr. WEBB. Yes, sir; I think each State has its own.

Mr. SMITH. Well, there are certain provisions in this bill that certain interests in my State object to, particularly section 4, and also part of section 1.

The CHAIRMAN. Is that a general matter or a local matter?

Mr. LENROOT. Well, there are entirely different questions involved in some of the other States than those involved in California.

Mr. WEBB. Yes. I will say that California's questions are unique and peculiar; it is the only State which has just those problems, and this bill, when amended along the lines the Secretary has suggested, and with what will be added to it by the department after further consideration, will meet the California situation.

The CHAIRMAN. Then I am right in saying that each State may or may not rest on the same state of facts?

Mr. WEBB. You are right.

Mr. TAYLOR. Will this bill be broad enough to meet all the difficulties in the other States? If not, then they would have to be adjusted.

Mr. WEBB. I understand that some of the gentlemen want changes in the particular provisions applying to their States; but we are not concerned with the provisions affecting the other States. The bill would suit our State with the changes suggested by the department; but as to other States there might be some particular parts of the bill that would have to be amended to meet their situation.

Mr. FINNEY. I do not want to take up the time of the committee but I want to make it entirely clear while Mr. Webb is here that the department is not willing to have any State selections ratified for any mineral lands and it is not willing to have any selections ratified for any water-power sites, because that is taken care of in the water-power bill which this committee has reported, and which was passed, giving the State a right to a patent for those selections, with the reservation of the power of development and use. So we would not like to have anything in this bill which would give the State an absolute and complete patent to any lands withdrawn under the act of 1910 for water-power sites or under this petroleum or other mineral withdrawal, which would give them title to the minerals.

The CHAIRMAN. You are in agreement on that, are you?

Mr. WEBB. Yes; we are in agreement on that.

Mr. KENT. Mr. Chairman, I am unfortunately not a lawyer, and I fail to understand that decision to which Mr. Webb referred. As I understand Mr. Webb, it was held by the Supreme Court of California that an action for condemnation of a reservoir site would lie against the State in school-land sections in the forest reserves; that is, against base lands. Is that correct?

Mr. WEBB. That is right.

Mr. KENT. Then it seems to me that it is probable that those lands are still the property of the State of California, irrespective of lieu rights. I may be wrong, but it seems to me that that is quite an important question.

Mr. WEBB. There is no question that sections 16 and 36 within forest reserves are the property of the State; there is no question that the title does rest in the State; the question is, is it an assignable title under the act of 1891.

Mr. KENT. I know that nobody wants to exchange them for a title to a water-power site; he has to take that particular section of land. And that decision, it seems to me, nails that particular section down to the ownership of the State of California, regardless of the lieu election outside of the forest reserves.

Mr. WEBB. Why, the State pleaded that; the complaint alleged that California had the ownership; the answer admitted the ownership. Under the grant of 1853 the section had not been surveyed. There was no question about the ownership. That was the property of the State and could, but for local legislation, be sold in place. The only question, however, that is here involved, as I suggested, is, while the State is the owner of the legal and equitable title of that surveyed section, may it, under the act of 1891, submit that section to the Federal Government in exchange for a like section of the public domain outside of a forest reserve? That was the only question. I think that is clear. And I will say that, after this question arose, lest the power of the State might be questioned, as to whether it could assign or not, having the title in place—nobody questioned that—the legislature passed an act authorizing the surveyor general to make the exchange; to assign each particular section. That was done about 1909 also; that was to avoid the question whether the officer had the right to make the exchange or assignment; the legislature of the State thus did all that was possible; and now this bill, so far as it affects California, we ask you to so frame that it will permit that exchange to be made.

Mr. KINGSBURY. The legislature also passed an act providing that when the United States listed the lands selected by the State in lieu of any particular section 16 or section 36, the title of the State of California to that sixteenth or thirty-sixth section immediately vested in the United States.

The CHAIRMAN. Mr. Smith of Idaho, will you present your attorney general?

Mr. SMITH. Gentlemen, we have with us Hon. J. H. Peterson, attorney general of Idaho, who has come on to be heard on behalf of our State.

STATEMENT OF HON. J. H. PETERSON, ATTORNEY GENERAL OF THE STATE OF IDAHO.

Mr. PETERSON. Mr. Chairman, and gentlemen of the committee, the State of Idaho has always looked upon the State of California as an elder brother, and in this matter they have our entire sympathy and support. The case of the State of Idaho, however, in this matter is an extremely simple one. There are very few, if any, complications, and I fail to see why there should be any objection, and I think there

would be none, if we were standing on our own feet, here, without any questions occurring that have arisen in other States.

Upon the admission of the State of Idaho into the Union, she was given by the Federal Government sections 16 and 36 for common school purposes, with the usual provision that when those sections were lost to the State, that she might assign as a base for the selection of lieu land in place of it. The State of Idaho has never assigned as a base any surveyed sections 16 or 36, but has assigned, as a base, from time to time, unsurveyed sections 16 and 36 in forest and other reservations. The State of Idaho, Mr. Chairman and gentlemen of the committee, is in a critical stage of development. Unfortunately we are not as old, nor as wealthy as California. We are building a great commonwealth out there, furnishing the people with a progressive government, and we are in that stage of development when we have to build our schools and our roads, and the taxes upon the people of the State, few in number, have become very burdensome, necessarily so. We have as progressive a form of government as can be found in the United States. The direct primary law and commissions of various sorts are already known and exercised in the State of Idaho. Our citizenry is very progressive.

The school tax in the State of Idaho is very heavy, for the reasons I have just outlined. So that when half of our State was included in a forest reserve—I am speaking in round numbers—it removed from sale great quantities of common-school lands within unsurveyed sections 16 and 36, so the State of Idaho devised the plan, in cooperation with the gentlemen who are in charge of the Forestry Bureau—and I have to say for them that they have always cooperated with us, and have injected into the management of forest-reserve affairs in our State particularly a feeling of fellowship and human kindness that was lacking in the inception of the forest-reserve policy of the United States. Our interests were mutual with the forest-reserve officials. The sixteens and thirty-sixes, being scattered throughout the forest reserve, interfered with the management and control of the forest reserves, and being included in forest reserves, these school sections, as I say, were somewhat removed from sale or disposition, so that the common-school fund could not benefit by them. We therefore devised a plan to work, in cooperation with the Forestry Bureau, and arranged a trade—and I think Idaho was the first to take up this matter—and arranged a trade with the Agricultural Department by which our unsurveyed sections 16 and 36 in forest reserves were cruised or estimated, and then an exchange of a body of land in a forest reserve of equal area and approximately equal value was decided upon and assigned by the State land board of the State of Idaho and the forest reserve. This exchange was beneficial to the State, because it gave us a large body of land in a compact body that could be sold; and that also, as I say, removed the difficulties of administering a forest reserve, where the State, by reason of its right to sections 16 and 36, had various titles scattered through the forest reserve. That was also vastly beneficial to the State, because, as the committee knows, it is always easier to dispose of timber lands, especially in a large body, than it is to dispose of scattered sections here and there. This was all agreeable, and the State land board of the State of Idaho, which they had a right to do under our constitution and law, nade a con-

tract with the Secretary of Agriculture by which this exchange was consummated. This agreement is as follows:

Memorandum of agreement made and entered into this 4th day of October, 1911, between the Department of Agriculture of the United States, through James Wilson, the Secretary of Agriculture, and the State of Idaho, through James H. Hawley, its governor, looking toward a settlement and adjustment of all matters of difference relative to the unsurveyed school lands within the national forests in the State of Idaho.

It is agreed between the foregoing parties that the following proposition shall be the basis of settlement, the details to be worked out as soon as practicable.

That as to all unsurveyed school sections included within the national forests in the State of Idaho, excepting those lost to the State by homestead settlement or which have already been relinquished to the United States as a basis for the selection of lieu lands, it is agreed that the State shall relinquish her claims and select as lieu lands other lands equivalent in acreage and values, lying along and within the present boundaries of the national forests in such position that when eliminated therefrom all will lie outside the new exterior boundaries of the national forests.

In order to carry out the proposition above expressed, it is further agreed that a representative appointed by the State land board of Idaho and a representative appointed by the Secretary of Agriculture at the earliest possible date shall make, with such assistance as may be necessary, an examination upon the ground of the lands comprising the unsurveyed school sections to be relinquished and the lands to be selected in lieu thereof, and shall report their conclusion to the State Land Board and the Secretary of Agriculture for final approval.

In making lieu selections as above provided, it is understood that the State will select this equivalent area in several large tracts, some of which will be principally valuable for their timber and others for their forage, but that the State may have the right to select smaller tracts of not less than one section in any case.

It is further understood that after the representatives above mentioned have agreed upon the selections of lieu lands within the present boundaries of the National Forests and along the boundaries thereof, as nearly as may be equivalent in value to the sections 16 and 36 surrendered, that the Secretary of Agriculture will recommend an executive order eliminating the lands so selected from the national forests, so that new boundaries thereto may be created and that the lands so selected by the State be entirely without the national forests and be subject to the exclusive direction and control of the State, provided that the law at that time is such that the lands surrendered by the State will become a part of the national forest.

It is further understood that the salary and expenses of the representatives above referred to appointed by the State land board shall be paid by the State of Idaho and the salary and expenses of the representative appointed by the Secretary of Agriculture shall be paid by the United States Department of Agriculture.

The undersigned agree to the above propositions and agree to carry them out as far as they have official power and authority to do so.

[SEAL.] JAMES WILSON,
Secretary of Agriculture.

[SEAL.] JAMES H. HAWLEY,
Governor of Idaho.

Mr. LENROOT. Was that upon a basis of equal area and equal value?

Mr. PETERSON. Equal area and approximately equal value, as near as it could be arrived at.

Now, as I say, that contract was made in 1911. Up to that time there had been no question raised by the department under the act of 1891 that has been referred to by Attorney General Webb of California, as to the right of the State to assign, especially unsurveyed bases in a forest reserve. But upon Assistant Secretary Jones of the Interior Department coming into office, he raised the question, I think for the first time. It has been passed upon by Assistant Attorney General Van Devanter, who is now Associate Justice of the United States Supreme Court, and we had relied upon his very able decisions. There was a long line of them that never had been questioned, but Assistant Secretary Jones raised this question. Assistant

Secretary Jones is a very able lawyer, and we have every respect for his opinion, and have been trying, ever since the question was raised, to bring ourselves within the requirements of the department. The Legislature of the State of Idaho, in 1911, passed an act authorizing these exchanges. I took that case into the supreme court of our State, and they held that the act was constitutional in all respects. Now, this contract has been pending down here for five years. There is involved approximately 300,000 acres of land. I do not need to tell you gentlemen of the committee what that amounts to to the State or Idaho and to the school fund of that State. There are no rights of private individuals involved. There is no question of difficulty between the State of Idaho and the Department of the Interior. We have always worked in absolute harmony. That is also true, as I have said, of the Department of Agriculture. There seems to be no question any place, there seems to be no objection from any source, but gentlemen, for five years we have been unable to clear list the land included in this exchange. We filed our selection lists, assigned our base, and those selected lists have been quietly resting in the archives of the Interior Department since that time.

Mr. RAKER. What is the main objection, that they do not free list them?

Mr. PETERSON. The main objection, the only objection, is that assistant Secretary Jones has felt that some sort of legislation should be passed by Congress authorizing these exchanges, and felt some question about the point of law, and his authority and power to clear list that land.

Mr. RAKER. In the Hibbard-Slack case, did not that question exist, where the land is unsurveyed?

Mr. PETERSON. I do not think in the Hibbard-Slack case that was touched upon at all.

Mr. WEBB. In neither of those cases did the question as to unsurveyed school sections exist

Mr. LENROOT. The Whitney case involved that question, did it not?

Mr. PETERSON. The question may have arisen in the State of Washington.

Mr. LENROOT. Does this contract that you speak of completely adjust all the questions between the State of Idaho and the Government?

Mr. PETERSON. Yes, sir.

Mr. LENROOT. So there will be nothing remaining?

Mr. PETERSON. Nothing remaining at all. That practically balances off all our school selections.

Mr. LENROOT. There will be no right of any further selection of surveyed lands. It completely adjusts the grant?

Mr. PETERSON. There may be a few scattered acres here and there, but in the main it clears our situation entirely, and balances our books.

Mr. LENROOT. Is it intended as a settlement of the entire controversy?

Mr. PETERSON. As far as we know, it includes all the land that we have to exchange.

Mr. LENROOT. That hardly answers my question whether the contract completely adjusts it for all time. I speak now of the terms of the contract, of course.

Mr. PETERSON. Yes, that is all the land we could find at that time. I do not want to bind myself down to stating that we may not suffer a loss of 160 here and there, as time goes by, but I do mean to say that, as far as the land department of the State of Idaho knows at this time, it has suffered no loss of school land that is not included in the contract. That was our desire and intention, to balance off our books, and I think it does so.

Mr. LENROOT. Does it surrender any claim to any of these lands any place within these reservations?

Mr. PETERSON. Yes, it surrenders all title and claim.

Mr. LENROOT. Not only to the specific lands, but to any lands; is that true?

Mr. PETERSON. To all lands described in the clearings.

Mr. LENROOT. This is a serious question, then, and if it be a question of law, and there are to be any lands that you have not taken care of that are in place, you have still got the question of title remaining as to any lands not described in your contract.

Mr. SMITH of Idaho. If this law is passed an adjustment could be effected under its provisions applicable to any lands not included in exchanges now pending.

Mr. PETERSON. This act is not intended to wipe us out or take up any losses we may suffer hereafter. It does, as I say to the committee, practically let us out and balances our books.

Mr. DILL. Will this law affect the contract?

Mr. PETERSON. I was intending to reach that in just a moment. We have some minor amendments, all of which are acceptable to the Secretary of the Interior, and which I shall call to the committee's attention in just a few minutes. I took up with the Secretary, upon my arrival here, in conjunction with Mr. Smith, the question of having the contract to which I have referred definitely referred to and accepted in the bill which is now before your committee. It will be noted that in section 2 of the act a provision is made ratifying the agreement between the United States and the State of South Dakota. The State of Idaho and the State of South Dakota are the only States that have consummated their agreements with the department.

Mr. RAKER. Is a copy of the contract between your State and the Federal Government in this hearing in the report?

Mr. PETERSON. Yes; I think that is included in the report.

Mr. RAKER. It ought to go in, so the committee will understand the situation.

Mr. PETERSON. Is it in the report, Mr. Potter?

Mr. POTTER. I think not.

Mr. PETERSON. Then I would like to put this in.

The CHAIRMAN. Do you want to put it in at this point?

Mr. PETERSON. Yes; I might as well put that in first.

The CHAIRMAN. What is that?

Mr. PETERSON. It is an agreement dated the 4th day of October, 1911, between the Department of Agriculture of the United States, through James Wilson, Secretary, and the State of Idaho, through James H. Hawley, then governor, looking to a settlement and adjustment of all matters of difference relative to the unsurveyed school lands within the national forests in the State of Idaho.

Mr. TAYLOR. Between Secretary Wilson, then Secretary of Agriculture, and Mr. Hawley, who was governor of the State of Idaho at that time?

Mr. PETERSON. Yes, sir.

The CHAIRMAN. May I make a suggestion there. Would it not be well to let that letter follow your proposed amendments there. It would seem that your amendments that you are going to offer would be in keeping with this agreement.

Mr. PETERSON. That is true.

The CHAIRMAN. Would it not be well to let this letter appear following your proposed amendments?

Mr. PETERSON. I do not know. I considered that a moment ago. I think, inasmuch as the amendments we propose relate directly to this, and it is all bottomed upon this, the better order would be probably to put the contract in first. I do not know. I would yield to any suggestion.

The CHAIRMAN. So, without any objection, this contract will be admitted to the record at the inception of Mr. Peterson's statement.

Mr. POTTER. I want to say, Mr. Chairman, that later on I will present to the committee copies of the agreements that have been entered into with all of the different States, and present to the committee full information in reference to the detail of them.

Mr. LENROOT. I would like to ask at this point, following my inquiry of a moment ago, would you have any objection to an amendment of this bill, provided the terms are accepted, that there shall be a relinquishment of all lands in place, reserving a right to indemnity, if they are not all covered by this contract, not cutting off any rights to any lands, but adopting this method of settlement of further indemnity, if there be any?

Mr. PETERSON. I would be very glad to have any, very glad indeed, and that is just exactly what we intend to do.

Mr. LENROOT. Simply saving such rights.

Mr. PETERSON. Yes; we believe this act gives us that power. Now, the land described in the contract was excluded from reserve by presidential proclamation, and as I have explained to the committee, was included in our clear lists which are pending in the Interior Department. Now, the State of South Dakota and the State of Idaho are the only States which have consummated their agreements. We have done everything that the contract requires and the Department of Agriculture has done everything this contract required it to do. Nothing remains but the act of the Secretary to clear us. I called the attention of the Bureau of Forestry and Mr. Potter to the fact that Idaho should be included with South Dakota in the second proviso in section 2, inasmuch as we, too, have consummated our agreement.

The CHAIRMAN. That occurs on page 3, lines 15 and 16, of the bill, if the committee wants to look at it.

Mr. PETERSON. That matter was taken up with the Secretary of the Interior, and he agreed to include the State of Idaho in that regard, and prepared and submitted to the chairman of this committee and the chairman of the Public Lands Committee of the Senate, a letter under date of March 18, 1916. I should like to have that letter,

including a copy of the amendments which we desire, also included in the record.

The CHAIRMAN. Without objection, it will be incorporated at this point.

(The letter referred to is as follows:)

DEPARTMENT OF THE INTERIOR,
Washington, March 18, 1916.

Hon. HENRY L. MYERS,
Chairman Committee on Public Lands, United States Senate.

MY DEAR SENATOR: By letter of December 13, 1915, I transmitted to your committee a tentative bill intended to meet the difficulties encountered by the department in the adjustment of the several school grants, and the measure thus submitted was subsequently introduced as Senate bill 2380.

By section 2 of this bill provision is made for a plan of adjustment of the school grants, in so far as they fall within the exterior limits of national forests, through mutual agreements between the United States and the States. In the second proviso to this section the agreement of adjustment heretofore made and consummated between the United States and South Dakota is ratified and confirmed.

When the draft of this measure was originally under consideration in the department it was not believed that any of the agreements that had theretofore been entered into between the States and the United States, with respect to the adjustment of school grants within forest reserves required ratification, except in the case of South Dakota, where title to the subject matter of the agreement had actually passed by the approval of the Secretary of the Interior.

Attention is now called to the pending agreement entered into under date of October 4, 1911, between the Secretary of the Department of Agriculture and the governor of the State of Idaho, and the fact that in pursuance thereof the President of the United States, by proclamations of June 4, 1912 (37 Stat., 1743), and March 3, 1913 (37 Stat., 1777), modified the boundaries of certain national forests in the State of Idaho to permit of the consummation of said plan of adjustment it being accordingly suggested, in order that no question should arise hereafter as to the validity of this adjustment under said agreement, Congress should also ratify proceedings under this agreement, so far as consummated, the same as in the case of South Dakota.

This proposition meets with my approval, and I have therefore the honor to suggest the following amendment of the second proviso in section 2 of Senate bill 2380:

"*Provided further*, That the agreements between the States of South Dakota and Idaho and the United States, January fourth, nineteen hundred and ten, and October fourth, nineteen hundred and eleven, so far as heretofore consummated in accordance with the proclamations of the President, February fifteenth and June fourth, nineteen hundred and twelve, and March third, nineteen hundred and thirteen (Thirty-seventh Statutes at Large, pages seventeen hundred and twenty-nine, seventeen hundred and forty-three, and seventeen hundred and seventy-seven), are hereby ratified and confirmed."

Very truly, yours,

ANDRIEUS A. JONES, *Acting Secretary.*

Mr. PETERSON. Now, the bill which is pending provides in section 4 as follows. It is just a few lines, and I will read it:

That the provisions of sections 1 and 2 of this act shall be applicable only where the State shall have, by constitutional legislative enactment, signified its assent to the terms of said act of 1891.

The State of Idaho has done that, and as I have said, has had it passed upon by the Supreme Court, and held to be constitutional. But the section goes on, "as herein declared and amended." Now, we thought it unnecessary to compel the State of Idaho, in that it accepted the act of 1891, and had gone through the courts with it, and the act of 1891 has in it the gist of the act which is before the committee; in other words, there would be, it seems to me, no logical reason for compelling the State of Idaho to go back to its legislature and accept this act which is before the committee now, and take that act before the Supreme Court of the State of Idaho, before it could get

these 300,000 acres of land clear listed. So, to avoid that necessity, I suggested to the Department of the Interior that the proviso to which I have referred, and which is included in the letter I just have had introduced in evidence, under date of March 18, 1916, addressed to your chairman, switched over where it occurs in the bill pending in section two, to the end of section three. Instead of leaving it where it is, we propose to switch that to the end of section three, so as to validate this contract, without the necessity of again going before our legislature and supreme court and necessitating that long delay; and that amendment is acceptable to the Secretary of the Interior.

Mr. DILL. Do you include South Dakota and Idaho?

Mr. PETERSON. Yes, sir.

Mr. TAYLOR. The State of South Dakota could have no objection to that, could it?

Mr. PETERSON. No; I submitted it to the Senator from that State yesterday, and he had no objection. I think the Secretary of the Interior has no objection.

Mr. FINNEY. The department has no objection to that.

Mr. LENROOT. That might cover a case in the past of a mere acceptance by your legislature of the act of 1891, but if the proper construction of the act of 1891, unamended, be that it did not authorize these selections, then where are you, so far as the assent of the State of Idaho is concerned, unless you accept it as amended in this bill?

Mr. PETERSON. There is no essential difference, that we can see, nor can the department see it, between exchanging these lands in block, or in bulk, and exchanging them by piecemeal, as authorized in the act of 1891. We could see no legal difference between the procedure; neither could the department. It simply facilitates the State in filling the land grants that we get.

Mr. LENROOT. That has been the theory, that here was an actual loss to the State of Idaho of the lands in place, for which you were entitled to secure indemnity, has it not? But upon the other possible theory, that here was a grant of these lands in places, and the title was conveyed to those lands, then under the act of 1891 you would not be entitled to select under the provisions of that act, but this act which gives you that right?

Mr. PETERSON. I do not think I quite get your question, Mr. Lenroot.

Mr. LENROOT. I am not very familiar with this.

Mr. FINNEY. As I understand his point, it is whether if, under your amended act, the grant of title to unsurveyed school sections passed. As I understand, the State of Idaho has no right to surrender them, as the basis of these selections, under the existing law. I do not understand the State of Idaho makes that claim. It does not claim that title to unsurveyed school sections passed. They admit it does not pass until identified as unsurveyed. I think the Supreme Court has so held.

Mr. PETERSON. I thank you very much, Mr. Finney.

Mr. LENROOT. Of course, that is directly the question in the State of Washington.

Mr. PETERSON. But, so far as the State of Idaho is concerned, Mr. Lenroot, the question of the time of the passage of the title to the State under this granting act has been before our supreme court

and has been passed upon, and they have held, I say, that, so far as the unsurveyed school sections are concerned, it is a floating grant, and does not attach until identified by survey. The department itself is satisfied with the decisions. We have had three decisions there on that subject.

Mr. LENROOT. Was the question ever raised as to the effect of a grant between the time of actual survey and the approval of the plats. That has been up, Mr. Finney, has it not, in one or two cases?

Mr. FINNEY. I think the question has been raised, Mr. Lenroot, but perhaps not in connection with Idaho.

Mr. LENROOT. No; I did not mean in connection with Idaho.

Mr. PETERSON. Now, gentlemen of the committee, I have been working five years on this proposition, not as long as the State of California, of course, but we can not afford to wait as long as the State of California. They are opulent, and we are, as I stated in the beginning, we are poor, and we need everything that the Government intended that we should have for the benefit of our schools.

In the matter of possibilities we are certainly opulent. We have one of the most wonderful States in the Union. If we could avail ourselves of the resources we have, and extract ourselves from entangling and embarrassing red tape in the adjustment of our affairs, Mr. Chairman, we would have a blooming and blossoming Commonwealth, beautiful to behold.

This is of no interest to the committee, but I flatter myself that possibly it is to the great State of Idaho. I am going out of politics this fall, and a new man will take my place. I have studied this thing, and worked on it for five years, and I would pray the committee, on my bended knees, that while we have this thing before us, while we all understand it, where there is no objection to it, that even in view of your great duties that you have to perform now in the present condition of public business, that you do give some little time to this act, and that you assist the State of Idaho in obtaining this title to this school land, which the Government intended it should have.

The CHAIRMAN. Might I interrupt your very eloquent statement by suggesting that you and Gen. Webb, and the rest of the new blood that comes into this equation, go over and pour some eloquence on the Senate committee that has been killing our bills that we pass here and never report anything? We sit here months in and months out reporting bills and sending them over there, and I think if you will prevail on them with equal fervor that you have on us you might be able to accomplish something.

Mr. PETERSON. Mr. Chairman, I have given up all hope of trying to convert the Senate committee. There is no politics in this bill. There is nothing spectacular in it. If we had a bill here—if the committee will pardon me—that had in it spectacular features, then I have no doubt that I might convert the Senate committee. But I would like the time to come, Mr. Chairman and members of the committee, when these obscure matters that so vitally affect the people of the State, even though they are not spectacular, might be gotten through Congress, and I would delight to see the time come in our politics, if the committee will permit me to say so, when the hard-working man, without the ability to advertise, will come back into his own in the affairs of our Nation, and the spectacular man will disappear forever from the history of the horizon of our politics.

Mr. SMITH of Idaho. Mr. Chairman, I want to introduce in the record at this point and read for the information of the committee a telegram I have just received from the State land commissioner, Hon. George A. Day, addressed to me, which reads as follows [reading]:

The bill legalizing the exchange of lands will be considered by your committee to-morrow. The State is most vitally interested in this bill. I hope it can be passed speedily and give us the relief we so much need. Under the delay Idaho is suffering materially.

GEORGE A. DAY,
State Land Commissioner.

The CHAIRMAN. You want that to appear in the record at this point?

Mr. SMITH. Yes, sir.

Mr. RAKER. I would like to state in the record that the presentation of this matter by Attorney General Webb and Surveyor General Kingsbury comports with many letters and telegrams, and in fact the general desire of the people in northern California who are involved and interested in the adjustment of this lieu-land situation between the State and the Government, and therefore their presentation of it covers the whole matter, without going into any particular one, and if the others have not come, it is because the attorney general's and surveyor general's statements contain a full and clear presentation of it.

Mr. TAYLOR. There is no division of sentiment in California on the subject?

Mr. RAKER. None whatever, as presented by the attorney general, but the bill, as originally presented, of course would undo the whole thing.

STATEMENT OF MR. ARTHUR BERGESON, GERALDINE, MONT.

Mr. BERGESON. I was sent here, as a delegate from a community of Geraldine, Mont., on the State land bill. It seems that the State has made more selections in our county than in any other one county, and the title of the lands being in question, has been held back, and not open to settlement of any kind. The State land and this lieu selection comes up into our town, up into the town site, and includes 80 acres of our town site, and there is one selected township of land that is covered entirely by this lieu selection. Last spring a year ago I made a trip to Helena as a member of the school board of our town, to see if the school board could get a site for school purposes, and the school land board informed me that the State had no title; they had made selection of the land, but had no title, and they could not give us any assurance as to when they could get title; it might be several years, on account of the legislation that would be necessary to be perfected. They thought it would take a special act of Congress, an amendment to the constitution of Montana, to get a title. On the strength of this a number of homesteaders, I think something like 72 or 75, came in there, and filed on this land, under the contention that the State had no title to it. That law is perhaps more familiar to you people than it is to me. I am not a lawyer, but the contention of the settlers was that the State had no title, and on the strength of that contention they filed on the land, went ahead and made their

filings, and put up their cabins and made necessary improvements to hold the lands.

Mr. LENROOT. Were their filings received?

Mr. BERGESON. Their filings were rejected at the local land office, but they appealed to the Department of the Interior. The State selection naturally is detrimental to the community. There are something like 25,000 or 30,000 acres of State land sold that had been selected and had been approved, and title passed to the State about four years ago. This land was sold to buyers who were natural speculators on the whole tract of land. That was sold four years ago. I warrant there is not 640 acres in cultivation at the present time. Last spring a year ago the State sold 22,000 acres of their land, I believe, in our territory. There are only 80 acres of that land that has been put in cultivation.

Mr. TAYLOR. Did your State land board do this, or who?

Mr. BERGESON. The State land board sold it, according to the State laws, at a minimum price of $10 an acre. It had to be advertised for sale, according to the State laws, and the idea is that speculators come in there, and they are buying this land on 20-year payments, paying 15 per cent down, and the balance in 20 equal annual payments, at 5 per cent interest. Five per cent is something unheard of in our country, outside of the State department. We are more in the habit of paying 10 and 12 per cent, and are glad to get money at that rate. So, from a speculative standpoint, it is a good investment. These people come in there with the idea of buying this land at $10 an acre, holding it for a year or two, and then turning it over to locators, when they demand any price they hold it for.

Mr. TAYLOR. How does this bill affect it?

Mr. BERGESON. The lands that the State have selected have been approved, or will be approved by this bill, but the bill does not make any provision, or has not made any provision, for the approval of the lands that are pending, that have been selected but not approved, and these homesteaders should come in and get title to the lands.

The CHAIRMAN. So your interest is with reference as to whether or not the homesteader shall get the land or the State?

Mr. BERGESON. Yes. It only involves a small portion of the appropriation to the State, and that State has something like 400,000 acres of this land. We have nothing to criticize, either the department or the State, and are willing to hold all the land selected by the State, with the exception of this one small body, which is the only parcel that is in question.

The CHAIRMAN. Have you, Mr. Bergeson, taken this up with Mr. Stout or the department?

Mr. BERGESON. Yes; I have taken it up with Mr. Stout; also Senator Myers.

The CHAIRMAN. With the Interior Department?

Mr. BERGESON. Yes.

The CHAIRMAN. Could you get an amendment out of them?

Mr. BERGESON. Mr. Jones has assured me that if we can get an amendment to the bill he thinks there is no question but what the Interior Department will pass on it.

The CHAIRMAN. You have not as yet drafted an amendment?

Mr. BERGESON. No. It will only be a short amendment, coming in the provision under the first section of this act:

That all pending and unapproved selections heretofore made under said grants and in accordance with said act, if found otherwise regular, and for lands subject to selection at date of approval may be approved under the provisions of said act.

The CHAIRMAN. You could work that out with Mr. Stout later?

Mr. BERGESON. Yes. The amendment will only be to except all homestead filings in Choteau County made prior to a certain date.

The CHAIRMAN. Are there homestead filings in other counties?

Mr. BERGESON. No; this is the only county. I understand the State Department has no objection to this, either. This only applies to the State of Montana.

The CHAIRMAN. Have you any showing from them as to whether——

Mr. BERGESON. No; they could not concede our contention, because if they did it would put them on record and maybe start a movement for the whole country to jump in on these filings.

The CHAIRMAN. You think you can agree with your State delegation in Congress about that?

Mr. BERGESON. I think so.

The CHAIRMAN. And you think the department would not oppose an amendment?

Mr. BERGESON. I think the department would not oppose an amendment.

The CHAIRMAN. How many acres would that involve?

Mr. BERGESON. Something like 30,000 or 40,000 acres; not exceeding that.

The CHAIRMAN. These filings have only been made in one county?

Mr. BERGESON. In one county.

The CHAIRMAN. How far have these homesteaders gone?

Mr. BERGESON. They have made their filings and put up improvements.

The CHAIRMAN. But the filings have been rejected?

Mr. BERGESON. Yes; they have been rejected, but they have appealed to the Interior Department.

Mr. MCCLINTIC. They have made improvements?

Mr. BERGESON. Yes; some have made improvements.

The CHAIRMAN. What induced them to make application, and then make these improvements on State selections?

Mr. BERGESON. They base their contention on Mr. Jones's letter, of the department, of February 19, rejecting the standing of State selections until such time as Congress could act on it.

The CHAIRMAN. They sought to acquire lands, feeling that until they were finally acted upon, they might have their rights protected to entry and good title?

Mr. BERGESON. Yes, sir.

Mr. MCCLINTIC. Did some locator bring these parties in?

Mr. BERGESON. No, sir. They are all local people. They have no speculative interest. I think every one of them is a bona fide resident.

Mr. MCCLINTIC. They live right there in the county?

Mr. BERGESON. Yes.

Mr. STOUT. I might supplement Mr. Bergeson's statement by saying that these lands were lying there idle, and the settlers wanted them, but the State announced they had no title to the land, under the rulings of the Department of the Interior, and the settlers said,

"If the State has not the title to this land, we will go in and settle on it," and they are real bona fide settlers. That is the long and short of their contention.

Mr. BERGESON. We do not contend we are legally right. We may not be. That is not the contention.

Mr. RAKER. That selection of the State is now pending in the department here, undisposed of?

Mr. BERGESON. Yes.

Mr. RAKER. If the department would reject the State selection, it would be public land and the homesteaders would get the title?

Mr. BERGESON. Yes.

Mr. RAKER. If this bill confirmed the State selection, the State would get the title and dispose of it as it saw fit and the homesteaders would lose out?

Mr. BERGESON. Yes.

Mr. RAKER. Are there no other applicants for this land except these homesteaders?

Mr. BERGESON. That is all.

Mr. RAKER. No other lieu-land selection?

Mr. BERGESON. No.

The CHAIRMAN. Are there any controversies? These are 160-acre entries, are they?

Mr. BERGESON. Three hundred and twenty, but it would be better if we could make them 160.

The CHAIRMAN. Is there any complication between the settlers themselves, as to two or three claiming one tract?

Mr. BERGESON. I do not think so.

The CHAIRMAN. You do not know of any controversy of that sort?

Mr. BERGESON. No.

The CHAIRMAN. There is one rejected application on each tract?

Mr. BERGESON. Yes; as far as I know.

Mr. SMITH. How did they enter the 320 acres, under what law?

Mr. BERGESON. Under the enlarged-homestead act.

Mr. SMITH. Has that land been designated?

Mr. BERGESON. I think all that land in Chouteau County is described as 320 acres. You see, I came to Montana several years ago—about 12 years ago. I was in the banking business there. The policy of the State at that time was to protect the stockman. If a stockman had a ranch, he would have a water hole, or something of that kind, for stock, and he would ask for five or six thousand acres, to be selected by the State, to run a sheepfold. That was all right a few years ago, but our country has changed over night from a stock country to a farming country. Land in our community to-day that was worthless a few years ago is selling now for from $25 to $30 an acre for unimproved land. That has all been so rapid that we can not realize ourselves that we are out there.

Mr. SMITH. Is that a wheat country?

Mr. BERGESON. It is a wheat country; yes.

Mr. KENT. Would the State have any objection to letting it go for homesteads?

Mr. BERGESON. I do not think they would have any objection.

Mr. STOUT. There are peculiar conditions that surround this particular contract. The settlers went on there with no purpose of speculation, but with the bona fide intention of settling on the land,

and thinking that their right, which was due to them by reason of settlement, would not be subservient to the State's rights.

Mr. RAKER. Mr. Bergeson, whom do you represent here?

Mr. BERGESON. I represent the community of farmers in the county.

Mr. RAKER. A commercial club?

Mr. BERGESON. No. I am a merchant there. I have nothing to do with this, except that they wanted me to come. Mr. MacDonald also is city clerk and an attorney, and also one of the homesteaders. I have no land in controversy myself, and do not expect to have any. I have not used my homestead rights and do not expect to use them, because I have more work than I can take care of, taking care of my own business, so I have no personal interest in the matter whatsoever, simply to represent the homesteaders.

The CHAIRMAN. You get together with Mr. Stout and draft such an amendment as you can suggest.

Mr. BERGESON. We would like the committee to give this some consideration in the report.

The CHAIRMAN. We will consider your claim very carefully.

Mr. LENROOT. Mr. Stout, I would like to ask you whether you know whether the State will adjust the matter with these purchasers, if this is done, or whether it will still complicate matters, so that the claim to the land might be made by the purchasers after the homesteader has gotten the title?

Mr. STOUT. There are no purchasers.

Mr. LENROOT. They have purchased different tracts.

The CHAIRMAN. They have only filed that selection. It has not been approved.

Mr. STOUT. The selection has not been approved, Mr. Lenroot, there.

The CHAIRMAN. There would be no complication there.

Mr. LENROOT. There has been no sale by the State at all?

Mr. STOUT. There has been no sale by the State at all.

The CHAIRMAN. The selection has not yet been approved.

STATEMENT OF HON. FRED L. DENNETT, EX-COMMISSIONER OF THE GENERAL LAND OFFICE, WASHINGTON, D. C.

Mr. DENNETT. The matter has been thoroughly covered by Mr. Bergeson. The only point that came up was on the fact that the bill as it is now drawn would determine the applications of the settlers finally.

The CHAIRMAN. It would knock them out?

Mr. DENNETT. It would knock them out.

The CHAIRMAN. Let me ask you as a matter of law. You probably know better about these things than any of us. This selection, of course, has been made by the State for this land in the county represented by Mr. Bergeson. Now, if we summarily except that part of the State selections, and allow these settlers to treat this as public land and go on and perfect their rights, has the State any claim against the settlers or the Government, any just claim?

Mr. DENNETT. I would hesitate to pass upon that question, Mr. Chairman, offhand. You have heard this morning a long argument

on lieu selections. It is one of the most complicated questions before the department.

The CHAIRMAN. It is a question of how far their rights have passed by the mere selection.

Mr. DENNETT. That is pending before the department. As far as the settlers are concerned, it is to be finally determined, as I understand it.

The CHAIRMAN. In abundance of safety for the committee, we ought to exact something from the State that they are willing to yield on these particular tracts squatted on by those people.

Mr. DENNETT. My impression is that the very least you can do is not to pass a bill which will finally determine this question, and not allow the Interior Department to settle this question between the settlers and the State and the Interior Department. I do not think the committee wants to solve that contest in the bill it passes now.

The CHAIRMAN. Had you not better prepare a little something for us on that?

Mr. DENNETT. I will be very glad to do that, Mr. Chairman.

Mr. LENROOT. May I ask Mr. Dennett, so far as those rights are concerned, are they not protected, so far as the bill stands?

Mr. DENNETT. The matter, as you have noticed this morning, is in a very peculiar situation. The present policy of the Secretary seems to be that unless you give him new legislation on these State-selection lands these homesteaders will come in and ask for this land. I doubt if the words that are contained in the bill protect the settlers. You will notice in the first section there that there is a clause approving all pending selections. It says:

That all pending and unapproved selections heretofore made under said grants and in accordance with said act, if found otherwise regular, and for lands subject to selection at date of approval may be approved under the provisions of said act.

Mr. LENROOT. The confirmation, however, does not relate to any lands or selections which have not been approved.

Mr. DENNETT. But how are you going to do it? We would be perfectly willing, as I understand it, if we are allowed to fight this question out as to whether we had the right or not, but I think you would find it rather difficult to get this matter up before the department under that section.

The CHAIRMAN. In other words, if the legislation is allowed to stand as it is, you think that would perhaps determine the rights of the settlers adversely?

Mr. DENNETT. I think so.

The CHAIRMAN. You do not think they would be able to get their matters litigated as it stands?

Mr. DENNETT. I do not think so.

The CHAIRMAN. On the other hand, you would hardly think the committee justified in putting a proviso in there specifically allowing the settlers to take the land unless there was some relinquishment or condemnation on the part of the State, would you?

Mr. DENNETT. You mean so that there would be no comeback in the future?

The CHAIRMAN. Yes.

Mr. DENNETT. That is an act for the committee to determine.

Mr. TAYLOR. Mr. Dennett, have you any suggestions that you would care to submit here for the benefit of the committee?

Mr. DENNETT. I should be very glad to submit an amendment, after conference.

Mr. TAYLOR. I mean generally on this bill.

Mr. DENNETT. No, indeed.

Mr. TAYLOR. We would be glad to have the benefit of your information, if you would give it to the committee.

The CHAIRMAN. I hope you will, Mr. Dennett, assist the committee as well as you can on that proposition.

Mr. DENNETT. I will be very glad to.

Mr. RAKER. If the State should lose this land that it has now applied for, for which these applications are pending, upon which these settlers are claiming homesteads, would that in any way affect their rights to select other lands in place of that by virtue of the base which they have?

Mr. DENNETT. I should not so understand it.

Mr. RAKER. Then, if these settlers are given this land it is your understanding that the State in effect would not lose any right to select any other lands in place thereof?

Mr. DENNETT. That would be my personal opinion.

Mr. TAYLOR. Equitably the State ought not to lose this land, if the Government allows it to go into homestead settlements?

Mr. DENNETT. I do not see how it could, because it takes back the land that is offered for this. It does not lose that land.

The CHAIRMAN. The only question is how far the State selections affect the lands.

STATEMENT OF HON. JAMES M. GILLETT, EX-GOVERNOR OF THE STATE OF CALIFORNIA.

Mr. GILLETT. Mr. Chairman and gentlemen of the committee, I have only a few remarks to make, and some of them will be in reference to matters that have been just under discussion. I was governor of the State of California when Mr. Webb and Attorney General Kingsbury started on this question, as I think the attorney general has told you. Our people were complaining that they could not get their lands listed, and the Government was holding up all lands because of appropriations of lands upon the part of our State, and it started, as General Webb has stated, when that matter was up. I think everything has been cleared, but as far as California goes, and the Government have reached the conclusion that some legislation is necessary, and that legislation is embodied in the bill now before this committee. So we have reached that conclusion, and the one thing which remains now is to pass a bill which the department thinks is necessary and which we believe is necessary to take care of the situation.

I might say, in passing, that selections made by the State—and some of ours are from 15 to 30 years old, and as soon as that selection was made, the money was received by the State for the land, but if it was land that was unappropriated, it was listed. There was no patent necessary coming from the Government to the State of California for the land which the Government had selected. The mere listing was all that was necessary, and the only instrument of title

was the patent that the State itself gave. So our people, in making these selections upon land that was unappropriated, always treated the title as good title, and it was sold as such, and many pieces of property involved have passed hands a number of times, some as valuable agricultural land, some as grazing land, and a great deal of it as timberland.

Mr. RAKER. The State actually issued its patent?

Mr. GILLETT. The State would issue a patent, if they paid for it in full, but if they only paid 20 per cent, then it issued a certificate of purchase, and people bought this title and paid money for it. Some of the land became very valuable, as these 25 and 30 years passed by, and the State endeavored to get this land listed, so that the people who have purchased this land from the State in the years past could get the title they thought they were going to get, and get this cloud removed. As I said, some of the land is timberland. Naturally, there is a great deal of timberland in California. This is evident from the fact that one-third nearly of the State has been set aside in forest reserves. After these selections were made, after the property had passed, a great deal of it, from hand to hand, and become valuable, forest reservations were established, and we find the land now, that is a great deal of it, within forest reserves. I think about 70,000 acres that the State claims a right to have listed to-day is within the forest reserves that were not within the forest reserves at the sime the selections were made.

Of course, the law is that you can not locate on any land within the forest reserves, and the bill, as it is prepared, making the matter of land subject to selection at the date of approval, would take from the State of California those 70,000 acres which it has already sold to different citizens, and for which they have paid money, some of it years and years ago, which we think would not be fair, and the mere fact that it is forest reserve ought not to make any difference, because the people have come from different parts of the country and have bought up tracts of land for the purpose of building sawmills there, and have developed the country, and they need the property which they have, and which they have no title to. So we think that the amendment suggested by General Webb that it should read "subject to selection at the date of selection" would be proper and such an amendment will be prepared, I believe, by the Interior Department, which will protect these people and will also protect the Government as far as mineral land is concerned, and as far as water-power sites are concerned, which I believe ought to be protected. We have got large water-power sites in our State, and it is going to be one of the great assets of the State. I believe there will be no trouble in preparing an amendment which will take care of that. All I wish to say is that the matter is of great importance to our State. The matter has dragged along for a great many years, and we finally reached a point where the Government and the State of California, as far as the State of California goes, agree, and the people are writing and telegraphing and anxiously awaiting for this legislation to go through, so they will know just what their rights are.

Mr. RAKER. General, so far as California is concerned, is not the amendment suggested by you really covered in section one of the bill?

Mr. GILLETT. In section 1 and in section 3. The same amendment will have to be made both to section 1 and to section 3. That

is set forth in the letter that Secretary Lane has forwarded to this committee. That amendment may have to be redrafted, and probably will be submitted to this committee. I have talked to Mr. Finney about it this morning, and that amendment will probably be redrafted and sent here, but it complies with both.

Now, under section 3, for a long time the practice was to accept lands within the forest reserves that belonged to the State, as a basis for land outside of the forest reserves. The act of 1891 gave that right to a private individual, and the State considered itself as a private individual, and it made exchanges just the same as a private individual would, and that was continued for a long time until a doubt arose about it, and it is those selections that the State made of land in forest reserves that it wants protected the same as though it was a private citizen.

Mr. RAKER. What I meant by that was that under the department's unbroken practice, in a way, the second section really is not necessary, but still it belongs in there, I suppose, so there could be no possible question.

Mr. GILLETT. The second section, I think, will be probably due to come in, to prevent any flaw. I think that is the purpose of it. I think that would be a good provision to put in there. I think the Forest Service would like to have it that way. I think they have worked that out.

Since there was a doubt as to whether the State had a right to use this land in forest reserves for bases or selecting land outside of the forest reserves the matter has been held up, and these locations have been pending here. A party in California by the name of Snell has been getting $50 and $75 for locating people upon lands where these selections have been pending for years. Of course, I would not want an amendment put in here to take care of a man who was a settler on the land, occupying it as a homesteader, to cover an application made by people of that class, taking a chance out there that something might happen, and making money out of it, getting $50 or $75 for locating somebody on lands that probably would be denied; in other words, the selections that the State makes and which it is intended to make. A doubt exists whether or not the State had a right to make these selections. The fact is we do not have any doubt. We do not want now to jeopardize ourselves by an amendment which would give some locator or land speculator an opportunity to come in and make trouble. That is the contention of the Government and the State, that these selections were made, and the Government claimed they had a right to make them, and we think its right to make them should be confirmed.

Mr. RAKER. You mean by that, Governor, that if the selection was valid at the time it was made, and the land was open, and everything otherwise was in regular order, the man ought to have his application approved by the Government?

Mr. GILLETT. Yes.

Mr. WEBB. So that the approval of that will relate back to the date of the selection?

Mr. GILLETT. That is the idea.

Mr. RAKER. Not to consider the land as it is now, under withdrawal?

Mr. GILLETT. Well, suppose it should be held that the land owned by the State—I want to call General Webb's attention to this—suppose it should be held that the land owned by the State in the forest reserves could not be used as a basis for making selections of land elsewhere, this bill intends to confirm selections of that kind.

Mr. LENROOT. As I understand you, that is not the situation in California, is it? There is no question about the title to lands within forest reserves, because they were all created afterwards, and is not the question your right to select within the lands where the selection was prior to the creation of the forest reserves, but not approved?

Mr. GILLETT. I think I can put it to you in this way. See if I am right. Surveyor Gen. Kingsbury called my attention to it. Land which was owned by the State within an existing forest reserve——

Mr. RAKER. But surveyed and approved before the creation of the reserve?

Mr. GILLETT. Yes; and it belonged to the State. That land was used as a basis for selecting land outside of the forest reserve.

Mr. RAKER. And in another?

Mr. GILLETT. No; not in another.

Mr. RAKER. Not one that was afterwards created?

Mr. GILLETT. That was afterwards created. Now, the question is this: Did the State have the right, under the act of 1891, to make that exchange? An individual would have the right to make that exchange, because the act clearly gave it to him. The Government recognized that the State also had the right to make it, and that was the practice for years, until that question came up, which makes this bill necessary. The State is exchanging lands which it owned in forest reserves for lands outside of the forest reserves, so that the Government would have all the land within the forest reserves. That has been done for years, and land has been sold, and people own the land all over the State of California. Now, some fellow by the name of Snell, who I understand has not a very good reputation, seized an opportunity to bring about a situation where these pepole will be jeopardized in their rights, and what we want is that these selections made by the State at a time when the Government thought the exchange could be made—be confirmed—and it is proposed in this bill to protect them.

Mr. TAYLOR. Was the State of California one of the States in which the forest reserves could not be extended except by Congress?

Mr. GILLETT. I do not think so.

Mr. RAKER. Yes; it was amended three years ago.

Mr. GILLETT. Was it put in in the original?

Mr. RAKER. Not originally.

The CHAIRMAN. Those enlargements were made in your State by act of Congress, were they not?

Mr. GILLETT. Yes; I helped to get some of them myself.

The CHAIRMAN. The State, in surrendering these base lands in the forest reserves, does not make any reservation of power sites, or timber, or anything of that kind?

Mr. GILLETT. No.

The CHAIRMAN. The Government, by reserving the power sites and timber, gets the best of the trade all around and the State gets the worst of it.

Mr. GILLETT. There is a bill that provides that in these power sites that the surface land and the timber located on it will belong to the party who has the selection. I think that is the way that is drawn.

Mr. FINNEY. You are referring to the water-power bill, which provides that the State shall get the title to the timber and the land, but reserves to the Government the water-power rights. I do not think the Government has got the best of the State very much on these exchanges.

Mr. GILLETT. This matter was brought out and stated by the gentleman from Montana. These people have gone and located in good faith upon farming lands as settlers there, and here is an exchange that has been made by the State years ago of property that maybe changed hands half a dozen times, and it was made at a time when the Government thought the exchange could be made, and we are asking in this bill that that exchange be confirmed.

Mr. RAKER. In other words, the only thing involved in California is that the selections made, waiving all other conditions except the question of the situation of the lands, are to be approved and held to be valid; except as to the withdrawal in the forest reserve, they should be approved.

Mr. GILLETT. We want the selection approved that has been made by the State; if the State has exchanged land there and the Government has accepted a bid for it, we want that taken care of.

(Whereupon the committee adjourned.)

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Friday, March 31, 1916.

The committee this day met, Hon. Scott Ferris (chairman), presiding.

STATEMENT OF HON. ROYAL C. JOHNSON, A MEMBER OF CONGRESS FROM THE STATE OF SOUTH DAKOTA.

Mr. JOHNSON. My statement will be on the exchange of lands matter. I am not going to take time to make a legal argument on the questions involved, because I want to ask the permission of the committee to file a brief which covers all of the legal questions, taking all of the statutes involved, and states the contention of the State. I would say very briefly that in 1910 an attempt was made to withdraw certain lands in the western part of South Dakota, and put them into a forest reserve. The State was entitled to sections 16 and 36 of those lands, as this committee well knows. A committee from the State of South Dakota, consisting of the then Attorney General, Mr. S. W. Clark, and the then commissioner of school and public lands, came to Washington, and entered into a memorandum of agreement, which I will file with the Department of the Interior, and in that agreement two propositions were suggested, one that the State be confirmed by Executive action, if that be legally practicable, and not by act of Congress, in her claims to sections 16 and 36, as

and where they lie; second, that the State relinquish her claims to sections 16 and 36, and take in place thereof one or more large tracts or if preferred by the State, many smaller tracts lying along the borders, forming parts of the national forest, of lands leased by the United States, so that they could be legally selected by the State.

The agreement was then entered into and the State accepted the idea of the Department of the Interior to accept the lieu lands. In accordance with that agreement, they confirmed the title of the State to about 11,000 acres of land in South Dakota, and very poor land, up in the short pine district, in the northern part of the State, but held up the confirmation of much other land, about 20,000 acres, and the State of South Dakota has always taken for granted that the Government would confirm this title of the State. In 1911 we set aside this amount of land, 20,000 acres, for a State game preserve, and that is the part of this I want to discuss, because there is no question of our rights involved. The land we got title to we have already put perpetually into a game and forest reserve, have organized a forestry department, and have fenced that 20,000 acres of land, and appropriated $15,000 and bought and put buffalo in there. We have them in there, and we have deer, and we have organized a forest reserve with scalers, and we have a game preserve as good as that organized by the United States, and we are looking after our forests. There can be no objection to the confirmation of this title in the State of South Dakota, because we are doing the very thing that the Government has been doing, in organizing its forest reserves there, but we can not go ahead and appropriate much more in there for this forest reserve unless we get our title confirmed. The legislature of the State is willing to appropriate from the game fund. We have now $40,000 lying in the game fund which we would use for the propagation of game, and we would expect to put it into this forest reserve for more game and do the best we can for its preservation, but we do not dare do anything unless we can get this bill through and get title confirmed in us.

The CHAIRMAN. The bill, as it stands, approves the contract agreement between your State and the Federal Government really, which is all that you want done?

Mr. JOHNSON. Yes. If this bill were passed through Congress we would have the finest State game preserve in the United States. I think we have the finest one now, but we want to improve it. In that game preserve there are a few isolated tracts of land where settlers are, and the State of South Dakota wants to buy those settlers out, but we can not get a bill through the legislature until we can get title to that land.

There is nothing more I can add, because this brief has covered all the legal questions, and if I were to take the time to discuss those, I would take more time than the committee would give me. All I want to do is to present the facts. Mr. Gandy can answer questions, if brought before this committee, after Mr. Tillman appears.

The CHAIRMAN. As I understand, there is no amendment that you desire at all to the bill?

Mr. JOHNSON. No.

Mr. TAYLOR. How large is your game preserve?

Mr. JOHNSON. Twenty thousand acres.

STATE OF SOUTH DAKOTA,
DEPARTMENT OF SCHOOL AND PUBLIC LANDS,
Pierre, S. Dak., January 25, 1915.

Hon. THOMAS STERLING,
Washington, D. C.

MY DEAR SENATOR: Referring to the letter of Assistant Secretary Jones, under date of January 16, 1915, "17509," inclosed with your letter of the 18th instant, in regard to the proposed exchange of lands between the United States and the State of South Dakota, I beg leave to submit the following:

The honorable Assistant Secretary makes citations bearing on this matter from two different aspects. First, with respect to the authority of the Federal law of his department to effect such exchanges, and, second, the authority of the State under its constitution and laws to surrender its granted lands in consideration of an equal grant of lands elsewhere within its borders.

It is a mistake to refer to this matter at all as an "exchange" of lands between the United States and the State of South Dakota. Such reference has, I believe, prejudiced the State's interest from the beginning. It is in reality an agreement permitting the State of South Dakota to select lands within the former boundaries of national forests in lieu of losses to its school land grant by reason of the inclusion of sections 16 and 36 within the exterior boundaries of national forests before such sections were surveyed, and hence before the State's title had vested. For the sake of brevity, however, I shall continue the use of that term.

The first paragraph of the agreement of January 4, 1910, which is the basis for the "exchange" under consideration, specifically provides as follows:

"1. As to school sections, understood to be four in number, to which title vested in the State by reason of survey prior to the creation of a national forest: These will remain the property of the State and are not affected by this agreement.

In the case of Hibbard *v.* Slack (84 Fed., 571), cited in the brief which you inclosed, the Circuit Court of the Southern District of California held in substance that a State was not authorized to select indemnity lands in lieu of school lands which, after they had been surveyed, and the title has thereby become vested in the State, are included within the exterior boundries of a forest reservation. This decision, it will therefore be observed, does not cover the case at bar.

Both of the legal phases of the exchange, referred to by the honorable Assistant Secretary, are, it appears to me, contingent on two other legal questions. First: Was the general act of February 28, 1891, intended to amend the special act of February 22, 1889? Second, if so intended, was the said act of February 22, 1889, susceptible of being thus amended? These are substantially the two questions involved in the case of State *v.* Whitney et ux. (120 Pac., 116), also cited in the brief which you inclosed. The act of February 22, 1889 (25 Stat., 676), being the law providing for the admission o fthe States of North Dakota, South Dakota, Montana, and Washington into the Union, and commonly known as the enabling act, provides in section 10:

"That upon the admission of each of said States into the Union sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided*, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subjected to the grants nor the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands restored to and become a part of the public domain."

And section 11, in so far as it relates to the grant of lands, provides:

"Such land shall not be subject to preemption, homestead entry, of any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

The act of February 28, 1891 (26 Stat., 797), being an act of Congress amending sections 2275 and 2276 of the revised statutes, is in part as follows:

"Where settlements with a view to preemption or homestead have been or shall hereafter be made before the survey of the lands in the field, which are found to have been made on section sixteen or thirty-six, those sections shall be subject to the claims of such settlers; if such sections or either of them, have been or shall be granted, re-

served, or pledged for the use of schools or colleges, in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by the preemption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however*, That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced in the public domain and then taking the sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing.

"SEC. 2276. That the lands appropriated by the preceding section shall be selected from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur."

Bearing directly on the question whether the act of February 28, 1891, supra, was intended to amend or supersede the special act of February 22, 1889, the instructions promulgated by the honorable Secretary of the Interior April 22, 1891 (12 L. D., 400), may be considered well-nigh conclusive. They are in part as follows:

"I have considered the questions presented by your letter of March 31, 1891, calling attention to the act of Congress approved February 28, 1891 (Public, No. 106), entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States providing for the selection of lands for educational purposes in lieu of those appropriated for other purposes,' asking instructions in regard thereto, and requesting that the matter be referred to the Attorney General for his opinion.

"Your office prepared regulations for making school indemnity and other selections under said act, holding that in determining the rights of these States to indemnity not only the provisions of this act but also sections 2275 and 2276 of the Revised Statutes should be invoked. Upon consideration of the matter in this department it was held, on February 20, 1890 (L. and R., 84, p. 209), that the provisions of the general law as declared in sections of the Revised Statutes, above referred to, and those of the act having reference to these particular States, were in direct conflict with each other, and that the grants to these States were to be found in and governed by the later specific act.

"By the act of February 28, 1891, said sections of the Revised Statutes were amended in several material respects. It is now provided in substance: That where settlements are made before survey which are found to have been made upon section 16 or 36, these sections shall be subject to the claim of such settlers and that the State or Territory shall have indemnity for such lands. Indemnity is also provided where such sections 'are mineral land or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States,' and also where such sections are fractional in quantity or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever. It is as to the effect of this amendatory act upon the rights of the States mentioned in the act of February 22, 1889, that you inquire.

"The general rule of construction is that an earlier special act is not repealed by a later general act. In discussing this rule, it is said in Endlich on the Interpretation of Statutes, section 223:

"'Having already given its attention to the particular subject, and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment, unless that intention is manifested in explicit

language, or there be something which shows that the attention of the legislature had been turned to the special act, and that the general one was intended to embrace the special cases within the previous one, or something in the nature of the general one, making it unlikely that an exception was intended as regards the special act.'

"And again in the same work in section 231, it is said:

"'An intention to supersede local and special acts may, indeed, as is apparent from the illustrations afforded by this and the preceding sections, be gathered from the design of an act to regulate by one general system or provisions the entire subject matter thereof and to substitute for a number of detached and varying enactments one universal and uniform rule applicable throughout the State.'

"All the circumstances tend to show that it was intended by this act of February 28, 1891, to provide a uniform rule applicable to all the States and Territories having grants of school lands for the selection of indemnity lands. In speaking of the objects of this bill, Mr. Payson said:

"'The bill simply covers that condition which has been found to exist in the department by which certain of the States or Territories suffer the loss of these lands which happen to be in fractional townships and where no adequate provision for indemnity selection is made in their stead.' (Cong. Rec., Feb. 28, 1891, vol. 22, p. 3681.)

"These States admitted under the act of February 22, 1889, would fall in the list of States thus suffering, and in this particular at least, it is quite certain that the later general act was intended to take the place of the prior special act. The attention of Congress having been directed to the prior act and its defect in one particular, it is but fair to presume that all its provisions were held in mind in the further consideration of the later act.

"The report of the Committee on the Public Lands of the House of Representatives upon this bill, found on page 3632, volume 22 of the Congressional Record, recites and adopts the report previously made to the Senate. In the report the following is found:

"'In the administration of the law it has been found by the Land Department that the statute does not meet a variety of conditions, whereby the States and Territories suffer loss of those sections without adequate provision for indemnity selections in lieu thereof. Special laws have been enacted in a few instances to cover in part these defects with respect to particular States or Territories, but as the school grant is intended to have equal operation and equal benefit in all the public-land States and Territories, it is obvious the general law should meet the situation, and partiality or favor be thereby excluded. * * * The bill as now framed will cure all inequalities in legislation, place the States and Territories in a position where the school grant can be applied to good lands and largest measure of benefit to the school funds be thereby secured.'

"It would seem difficult to construe this language in any other way than as an explicit statement that it was intended that the provisions of that bill, which afterwards became the law now under consideration, should supersede all prior laws upon the subject, or, in other words, that it was intended to provide one uniform and general system of indemnity under these grants. This intention is quite clearly indicated by language of the act itself, and the substance of this report is recited to show that the object of the legislation was clearly laid before Congress by its committee having such matters in charge.

"In view of all the facts and circumstances herein set forth, I have no hesitation in concluding that the provisions of the prior act of February 22, 1889, in so far as they are in conflict with those of said sections 2275 and 2276 of the Revised Statutes as amended by the later act of February 28, 1891, are superseded by the provisions of said sections as amended, and the grants of school lands to those States mentioned in said act of February 22, 1889, are to be administered and adjusted under the provisions of this later general law.

"I have not deemed it necessary to present this question to the Attorney General of the United States, as requested by your office letter."

As these instructions were promulgated within less than two months after the passage of said act of February 22, 1891, it is but fair to presume that the honorable Secretary had personal knowledge of the conditions which brought obout this amendment. It is, in fact, not unfair to assume that his department was consulted in the preparation of this law, and that he was certainly in a position to know whether or not this act was intended to amend our enabling act.

The position taken by the Secretary of the Inteior in those instructions has been frequently reiterated and reaffirmed and has never been reversed or vacated. (Sec. 24, L. D., 12, 106; 34, L. D., 485, 657; 35, L. D., 158; 41, L. D., 621, and cases cited therein.)

Bearing directly also on this question, in so far as it affects the State of South Dakota, we have on file in this office a letter of Secretary Hitchcock under date of March 10, 1906, which is, in part, as follows:

"I am in receipt of a letter from Mr. C. J. Bach, commissioner of school and public lands for the State of South Dakota, dated February 8, 1906, advising the department that there is no serious objection on the part of the State to relinquishing its right to sections 16 and 36, located withing the limits of the Wind Cave National Park, and set aside for use as school lands for the State of South Dakota by the act of February 22, 1889 (25 U. S. Stats., 676), creating such State; but expressing a doubt as to whether the act of February 28, 1891, providing for the selection of lands outside of Government reservations in lieu of school lands within such reservation applies to the right of the State of South Dakota to accept other lands outside of the Wind Cave National Park in lieu of the sections above mentioned.

"In response thereto I have the honor to advise you it has been uniformly held by the department that the act of February 28, 1891, amending section 2275 of the Revised Statutes of the United States, is applicable to all public-land States, and operates as a repeal of all special laws heretofore enacted, so far as they conflict therewith. (23 L. D., 423; 27 L. D., 38.)

"It was held in Johnston *v.* Morris (72 Fed. Rep., 890), that the act above mentioned was intended to provide a uniform rule for the selection of indemnity school lands, and is applicable to all States and Territories having grants of school lands.

"It was also held by the department (28, L. D., 57), where a forest reservation includes within its limits a school section surveyed prior to the reservation, the State may be allowed to waive its right to such section and select other lands in lieu thereof.

"Very respectfully,

"E. A. HITCHCOCK, *Secretary.*"

It would appear, therefore, that the only legal question which needs serious consideration is the first one involved in the case of the State *v.* Whitney et ux, *supra.* wherein it is held in substance that the act of February 22, 1889, was a present grant and that on the State's adoption of its constitution which affirmed the enabling act, the grant took effect as of its date and passed the entire title of the United States to the lands so granted, though the sections had not yet been surveyed.

Section 10 of this act, which is the one making the school-land grant, it will be observed, makes no reference whatever to unsurveyed land. The language rather implies reference to surveyed lands only in that it says, "Sections 'numbered' sixteen and thirty-six * * * are hereby granted to the said States for the support of common schools." The language of section 11 of the enabling act in no way implies that the lands are "granted" before being identified by survey. It does provide, however, that lands not identified by appropriate survey are reserved from entry under the land laws of the United States.

That the State's title does not attach to any particular tract, or section, until the same has been identified by appropriate survey, and that until so identified they are still public lands, subject to the land laws of the United States, seems to be established beyond any reasonable doubt. In the case of the State of Washington *v.* Kuhn (24 L. D., 12) Secretary Francis, after carefully analyzing the two statutes, states:

"It is thus apparent from the foregoing that until surveyed no rights of the State can attach to sections 16 and 36 under the grant; and that settlements on said section before survey shall be subject to the claims of such settlers."

In the case of Hibberd *v.* Slack, supra, one of the cases cited in the brief of Assistant Secretary Jones, the court states as follows;

"In construing the act of Fe' ruary 28, 1891, there are certain well established principles of law, applicable to school sections, which should be constantly borne in mind as follows: First. Title to a school section, if unincumbered at date of survey, then vests a' solutely in the State. (Cooper *v.* Roberts, 18 How., 173; Heydenfeldt *v.* Mining Co., 93 U. S., 634.) And this is the principle recognized and acted upon by the Department of the Interior. (In re Colorado, 6 L. D., Dept. Int., 412; In re Virginia Lode, 7 L. D., Dept. Int., 459; In re Miner, 9 L. D., Dept. Int., 408; Pereira *v.* Jacks, 15 L. D., Dept. Int., 273.) After title has thus vested, the section is not subject to any further legislation by Congress. Therefore the school sections which were the bases of the selections of the lands sued for in the case at bar, although situated within the limits of forest reservations, are not parts of such reservations. (Wilcox *v.* Jackson, 13 Pet., 513; Railroad Co. *v.* Whitney, 132 U. S., 357, 10 Sup. Ct., 112.) Second. Until the surveys in the field of the school sections, to wit, 16 and 36, the United States has full power of disposition over them and, by the exercise of this power, said sections may be lost to the State. Hence, and through various enactments of Congress, has arisen the law of indemnity, whose cardinal doctrine is com-

pensation for loss. Thus, it has been said, 'the principle upon which indemnity is given to a State is for a loss.'"

In the case of the State of South Dakota *v.* Ruby, not reported, Acting Secretary Ryan holds as follows:

"It will be noted that no provision was made for the protection of settlers upon such sections 16 and 36 prior to the survey thereof, but such a provision is found in the act of February 28, 1891 (26 Stat., 796), amending sections 2275 and 2276 of the Revised Statutes, and said act of 1891 has been uniformly construed by this department as being a general adjustment act applying alike to all school grants to the several States and Territories, and in the instructions of April 22, 1891 (12 L. D., 400), it was held that the provisions of the act of February 22, 1889, supra, in so far as in conflict with sections 2275 and 2276 of the Revised Statutes, as amended by the act of February 26, 1891, are superseded by the provisions of said amended sections and that the grants of school lands provided for in the act of 1889 should be administered and adjusted in accordance with the later legislation.

"The school grants made by the act of 1889 have been since administered under these holdings, which clearly negative the idea that the grant made by the act of 1889 was a present grant of sections not identified by the public survey at the time of the State's admission into the Union, but rather that such grant had no binding effect until the survey of the townships and the designation of the specific sections granted. In applying the protective features of the act of 1891 in favor of settlements made upon school sections prior to survey, the department in effect has held that the reservation, by the act of 1889, of school sections, whether surveyed or unsurveyed, does not preclude the power of Congress to make other disposition of the lands prior to the time when the State's title may become complete, viz., upon their identification by the lines of the Government survey."

In the case of Cooper *v.* Roberts (18 How., 173), the supreme court said:

"We agree that until the survey of the township and the designation of the specific section, the right of the State rests in compact—binding, it is true, the public faith, and depending for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object, upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title."

Again in the case of Minnesota *v.* Hitchcock (185 U. S., 393), the supreme court used the following language:

"But while this is true, it is also true that Congress does not, by the section making the school-land grant, either in letter or spirit, bind itself to remove all burdens which may rest upon lands belonging to the Government within the State, or to transform all from their existing status to that of public lands, strictly so-called, in order that the school grant may operate upon the sections named. It is, of course, to be presumed that Congress will act in good faith; that it will not attempt to impair the scope of the school grant; that it intends that the State shall receive the particular sections or their equivalent in aid of its public-school system. But considerations may arise which will justify an appropriation of a body of lands within the State to other purposes, and if those lands have never become public lands the power of Congress to deal with them is not restricted by the school grant, and the State must seek relief in the clause which gives it equivalent sections. If, for instance, Congress in its judgment believes that within the limits of an Indian reservation or unceded Indian country—that is, within a tract which is not strictly public lands—certain lands should be set apart for a public park, or as a reservation for military purposes, or for any other public uses, it has the power notwithstanding the provisions of the school-grant section."

The same court in construing the grant of school lands made to the State of Nevada by the act approved March 21, 1864 (13 Stat., 30), after stating that the grant was a grant in praesenti, held that—

"Until the status of the lands was fixed by a survey and they were capable of identification, Congress reserved absolute power over them; and if in exercising it the whole or any part of a sixteenth or thirty-sixth section had been disposed of the State was to be compensated by other lands equal in quantity." (Heydenfeldt *v.* Daney Gold & Silver Mining Co., 93 U. S., 634, 640.)

In 37 L. D., 469, under date of March 1, 1909, First Assistant Secretary Pierce, in referring to the Black Hills National Forest, in South Dakota, held, in substance, that if the Black Hills National Forest is a permanent reservation for national purposes within the meaning of section 10 of the act of February 22, 1889, sections 16 and 36 therein are by the express terms of said act excepted from the grant, and if, on the other hand, said national forest is only a temporary reservation within the

meaning of that act, the title of the State under its grant will not attach to the sections 16 and 36 therein so long as the reservation exists, in view of the fact that the lands were unsurveyed at the time the reservation was established.

Again, on September 30, 1909, Acting Secretary Pierce, in a letter addressed to the attorney general of the State of Montana, wherein he reaffirms the decision referred to above (37 L. D., 469) and cites numerous court decisions in support thereof, states:

"This department and the courts also have uniformly held that the grant of sections 16 and 36 to the State does not vest until the lands are identified by survey, and the date of the survey is not fixed by the time the work is done in the field, but by the approval of the township plat by the proper authority."

An opinion by Wade H. Ellis, assistant to the Attorney General, approved by George W. Wickersham, under date of September 15, 1909, after carefully reviewing the question here involved, states as follows:

"The Interior Department is charged with the execution of the laws pertaining to public lands. It has been held by this office that where the construction of an act is doubtful, it is proper to resort to the construction which has been placed upon it by the department charged with its execution (22 Op., 167 and cases there cited), and if such construction is long established, continuous, and constant, it will be regarded as conclusive. (21 Op., 408, 413; 26 Op., 403.) This is said to be a settled doctrine in the Supreme Court. (United States v. Alabama Railroad, 142 U. S., 621.) I can see no reason for any departure from the rule fixed by the decisions referred to, but independent of this rule it is clear that the decisions are based on a reasonable construction of the statutes and a correct view of the law."

Considering, then, that the State's title does not vest until plat of survey has been filed in the local land office, the question arises, Has the United States the right to make other disposition of those lands, which, when surveyed, would be found to be sections 16 and 36, without the consent of the State, or would such disposition be a violation of the enabling act? This question appears to be fully answered by our State constitution. Article XXII of this constitution, entitled "Compact with the United States," provides in part as follows:

"Second. That we, the people inhabiting the State of South Dakota, do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundary of South Dakota and to all lands lying within the said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States; and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States."

It seems clear that as the State's title does not attach to any section 16 or 36 until their identification by survey that prior to such identification they are public lands of the United States, and that by this constitutional provision the State concedes that the United States has full authority to make such disposition of such lands as it deems proper.

The law is equally well established that where title has not vested in the State the tender by the State of certain section 16 or 36 as a basis for indemnity is merely public notice that the State disclaims any title to such section and that upon approval of the selection such tender serves as a complete waiver of any title to such lands ever being asserted. (See 30 L. D., 83, 438, 484.)

The State of South Dakota for years maintained that the act of February 28, 1891, supra, did not apply to our State, and that our enabling act could not be amended without a new compact being entered into between the United States and this State; but the Secretary of the Interior uniformly held against us, and in the adjudication of cases where parties had settled on school sections 16 or 36 before survey, the rule of law established in the case of Jane Hodgert (1 L. D., 632), that "the case should therefore be treated in all respects as between the United States and the appellant alone," was uniformly adhered to. The State was repeatedly told that we had no standing in court in cases of this character.

The records of this office will show that for nearly 10 years we have accepted the view of the Department of the Interior, as promulgated in the numerous decisions, referred to above. It is also true that this State has been very materially benefited by accepting this construction of the law, and is therefore estopped from ever denying that such is the proper interpretation of the law. During this 10-year period we have selected approximately 360,000 acres of indemnity lands, most of which were selected under the provisions of the 1891 act. Every selection list filed specifically acknowledges the right of the United States to amend our enabling act in the following language: "The State of South Dakota hereby makes application under the provisions of the act of Congress of February 22, 1889, and the acts supplementary and amendatory thereto." Are we now to believe that there is a doubt as to the State's right to make such

selections, and consequently to the State's title to the millions of dollars' worth of lieu lands thus selected, and also that there is a cloud on the title of the hundreds of settlers on the lands for which these lieu lands were selected?

The Department of the Interior has already held that it does not intend to be governed by the case of the State *v.* Whitney et ux., supra. In the case of the State of Washington *v.* Genler, decided March 8, 1913, after carefully reviewing this case, it held as follows:

"The principle deducible from these authorities is that the grant to the State of Washington was until survey of the land in compact only—an executory agreement—and until that time it was competent for the Congress of the United States to make other disposition thereof. With the policy which induced the Congress by the act of February 28, 1891, to provide for other disposition this department has nothing to do; that such is the effect of that act is clear. It is not only clear in terms, but that there might be no mistake in its administration, based upon such specious reasoning as is now advanced by the State as to alleged violation of the spirit of the compact, adequate provision was made to indemnify the State for losses which might be occasioned thereby."

In the other case cited in the brief which you inclosed, that of Balderston *v.* Brady et al. (107 Pac., 493; 108 Pac., 742), the principal question decided by the court was that the land board of the State of Idaho did not have sufficient authority, under the statutes of their State, to select indemnity, or lieu lands, and that not having such authority the approval of any selection made by such board would not have the effect of vesting complete title to the land tendered as a base in the United States. The court in this case found that the only way in which they would have complete authority to dispose of State lands was by sale at public auction, and that in such case the constitution fixed a minimum of $10 per acre. This lack of authority was, as suggested in the honorable Assistant Secretary's brief, remedied by appropriate legislation. (See chap. 6 and 39 of the 1911 session laws of the State of Idaho.) Subsequent thereto the supreme court of the State in Rodgers *v.* Hawley et al. (115 Pac., 687) upheld such legislation. Bearing directly on this point Assistant Secretary Laylin in the case of Thorpe et al. *v.* State of Idaho (42 L. D., 15), after carefully considering this case, held as follows:

"As the case now stands the proceedings in the State courts of Idaho are as though they had never been. This department has never had any doubt as to the validity of these selections. Its concern was because of the seeming declaration of invalidity pronounced by the court. The department did not feel warranted in patenting lands to the State of Idaho in exchange for lands which the court of highest resort in that State had apparently declared could not be relinquished by the State land board. This difficulty has now been removed and it is not material whether the court changed its mind upon the question or whether the invalidity suggested by the court in the first instance has been cured by legislation. In either case no good reason remains why said departmental decisions should not be carried into effect."

As you are no doubt fully aware, section 5 of chapter 224, Session Laws of South Dakota of 1911, fully authorizes the commissioner of school and public lands of this State to make selections of indemnity lands in lieu of all losses to its grant from the United States. The case of Balderston *v.* Brady et al., supra, need, therefore, not be seriously considered in the case now under consideration.

Following is a copy of a portion of memorandum of proceedings of a conference held at Washington, D. C., on January 3, 1910, between representatives of this State and the United States, relative to this exchange agreement:

"Two propositions were suggested:

"1. That the State be confirmed by executive action, if that be legally practicable, and by an act of Congress, if necessary, in her claim to sections 16 and 36 as and where they lie.

"2. That the State relinquish her claims to sections 16 and 36 and take in place thereof, either in one or more large tracts, or if preferred by the State many smaller tracts, lands lying along the borders and forming part of the national forest, which lands would be released by the United States so that they could be legally selected by the State.

"The first proposition was favored by the representatives of the State, and the second by representatives of the Forest Service."

You are perhaps already familiar with subsequent events in connection with this exchange, and know that the State finally acceded to the wishes of the representatives of the Forest Service, and agreed to select other lands in lieu of such sections 16 and 36 as were not identified by survey at the time of the creation of the national forests. The school sections involved, as well as a tentative lieu area, were examined by a commission having this work in charge during the field seasons of 1910 and 1911. Their

report was filed with the Forestry Department in December of 1911, and on the 15th day of February, 1912, President Taft issued his proclamation so changing the boundaries of the national forests as to eliminate the proposed lieu areas. The usual mode of procedure provided by the instructions of the Department of the Interior was followed in making the filings, based on the instructions issued by the General Land Office on March 9, 1912. Lists covering the lieu lands which were located in the Rapid City district were filed in that office on May 8, 1912, and filings for the lands in the Belle Fourche land district, were made on the following day. The lands in the Rapid City district are very valuable on account of their timber, while those within the Belle Fourche district, comprising approximately 12,000 acres, are principally only grazing lands and of comparatively little value. We were acting under the presumption, however, that if any of the selections were approved, they would all be approved, and in tendering bases for lieu lands some of the most valuable school sections in the Black Hills were offered as bases for relatively worthless sections in the Short Pine Hills Reservation. On April 30, 1913, the Assistant Commissioner of the General Land Office certified a list of 11,577.69 acres of the lands within the Belle Fourche land district to the Secretary of the Interior, and this list was duly approved by the Assistant Secretary on May 2, 1913.

The status of the exchange deal at present, therefore, is that we have title to a large acreage of lands of comparatively little value in lieu of some of our best forest lands, while the remainder of the deal is being held in escrow.

From the above citations and statement of facts, I submit that we were fully justified in assuming and believing that there was no legal impediment to the final consummation of this transfer of lands, and that the balance of the selections would finally be approved, and that the State would become the owner of the tract of land, which was by action of the legislature created a State game park.

Respectfully submitted.

FRED HEPPERLE,
Commissioner of School and Public Lands.
By N. M. HANSAN, *Deputy.*

STATEMENT OF HON. FRANK W. MONDELL, A MEMBER OF CONGRESS FROM THE STATE OF WYOMING.

Mr. MONDELL. Mr. Chairman and gentlemen, the legislation before you is intended to settle a number of questions with regard to the right of the States to select lands in lieu of lands in forests and other reserves. A number of years ago the Department of the Interior arrived at an interpretation of the act of February 28, 1891, to which it has adhered up to this time. That act, or the part of it that interests the committee at this time, is as follows:

And other lands of equal acreage are also hereby appropriated and granted, and may by selected by said State or Territory where sections sixteen and thirty-six are mineral lands or included in any Indian, military, or other reservation, or otherwise disposed of by the United States: *Provided*, Where any State is entitled to said sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its rights to said sections.

The Department of the Interior held, with regard to that act, that it was, in the first place, a general act, superseding all provisions contained in granting legislation up to that time, and that it was not merely an indemnity act, but an act authorizing exchanges.

I will ask the gentlemen of the committee to take your hearings, part 1, and turn to page 49, and begin at the paragraph at the top of the page marked "1." These two paragraphs, 1 and 2, are the department's statement of their interpretation of the act of 1891. They are as follows:

1. That the amendatory provisions of said act constitute a general scheme for the indemnification of the States as against loss occurring in the granted sections and supersede all provisions for indemnity in grants of school lands made prior thereto.

2. That the act of 1891 was not only an act providing for indemnification as against loss, but also authorized an "exchange" of title between the State and the United States where the granted sections fell within a national reservation.

Now, that was the departmental interpretation of this act of 1891, and it remained the law, to all intents and purposes, until, in the case of Hibbard *v.* Slack, a California case, reported in the Eighty-fourth Federal Reporter, page 571—you will find that at the bottom of page 48, the last paragraph.

The holding of the court was substantially to the effect that the act of 1891 was confined in its operations solely to a provision for indemnity in case of loss. In other words, the court held in that case that the State could not make exchanges for lands within a forest reserve that had been surveyed prior to their being included in the forest reserve, on the theory that as the title of the State attached at the time of survey, their inclusion in a forest reserve did not divest the State of its title. The court held that the law of 1891 was intended only to indemnify the State for lands that it had lost by the creation of the forest reserves, but that it did not authorize the exchange of lands where the State had not actually lost them; that is, where by survey titles had passed to the State.

Mr. SINNOTT. Mr. Mondell, what is meant by the phrase "at the time of survey"? Do you mean when the survey was approved?

Mr. MONDELL. When the survey was approved. Now, under that decision, the States could continue to make their exchanges, basing their exchange on unsurveyed lands within the forest reserves, because it was held that by the creation of the forest reserve the State actually lost those sections 16 and 36, but that, as it did not actually lose sections 16 and 36, that had been surveyed prior to the creation of the reserve, therefore, under that act, there could not be any exchange in such a case. That decision, of course, challenged the decisions of the department, and the practice of the department The department had been holding that this was an exchange act, intended to authorize the States to get out of the reserves, to leave whatever property they had in the reserves, and take the property elsewhere. That is their holding, and they had been selecting, and had selected thousands of acres on that theory, when along came this decision that it could not be done, where lands had been surveyed prior to their inclusion in a forest reserve.

This decision in the case of Hibbard *v.* Slack was followed later, as you all know, by the decision of the Supreme Court of California, holding to the same effect. Then, in a later case, in the State of Washington, Washington *v.* Whitney (120 Pac. Rep., p. 116), it was held that the enabling act of February 22, 1889, made a present grant to the State of the specific sections 16 and 36, whether surveyed or unsurveyed, and that the act of 1891, amendatory of sections 2275 and 2276 of the Revised Statutes, in no manner operated to repeal or modify the provisions of the grant made to the State in said enabling act. That was an entirely different question, as you can see.

Those two questions have held up for a number of years practically all State selections in the Dakotas, in Idaho, in Montana, in Washington, in Oregon, I think, in Wyoming, and in Colorado.

Now, understand that these questions have never been raised in any of these States, except in Washington and in California, and

Washington has never made the contention that was contained in the California decisions, that the act did not contemplate an exchange.

Mr. TAYLOR. How did that court happen to get off that way?

Mr. MONDELL. Outside of the record, I do not understand how any court could have gotten off that way, because the language of the act seems to be very clear. There has never been any question in Wyoming; there has never been any question in Colorado, so far as I know; none in the Dakotas—I am not so familiar with the situation in the other States. We have accepted the decisions and the determinations of the Interior Department. Our legislatures have legislated along the lines of the act of 1891, but in view of the fact that these court decisions were confronting the department, they suspended the certification of our exchanges, or our attempted exchanges, and the State of Wyoming now has between 80,000 and 100,000 acres which have been selected by the State which have not been certified, some of them selected seven, eight, or nine years ago, many of them sold by the State, and yet the State is without title.

Now, in this situation of affairs, I introduced in the last Congress joint resolution 266, and if you will turn to page 48 of that first hearing you will find that the letter therein contained, extending down to the bottom of page 51, was a letter written as a report on that resolution. That letter, as I understand it, was never delivered to this committee. It was written by the Commissioner of the General Land Office and by him transmitted to the Secretary of the Interior and held in the Secretary's office until the Secretary's office had gone over the entire question of exchanges and agreed upon the legislation that is now before you, in lieu of legislation proposed in 266 and in lieu of a number of other bills that had been introduced authorizing States to make selections and bunch those selections within the forest reserves. That letter is very complete and sets out briefly, but in sufficient detail, so that anyone can understand it, all of the questions in controversy.

Now, before I go further with that, I want to say, right along that line, that the primary questions before this committee are the questions of the interpretation of the act of 1891. The question of certain States securing the right to consolidate within forest reserves, while a tremendously important one to those States, is entirely secondary to the main question. You must first settle the question as to what that act of 1891 meant. What was its scope? What was its effect? And that must be settled before you can either validate the selections already made, provide for further selections outside the reserves, or provide for consolidations inside the reserves, because before you can provide for any of these selections anywhere, in or outside of the reserves, it must be determined whether the legislation contained in the various granting acts was superseded by the act of 1891; second, whether the act of 1891 authorized exchanges in lieu of surved lands, as well as in lieu of unsurveyed lands.

Now, we will come to your legislation. If the gentlemen will take their bills and follow me, I want to say this in regard to that first section. Remember we have two propositions here, two questions to settle. First, does this act, and did it, supersede other legislation? Second, did it authorize exchanges where the bases were lands surveyed prior to inclusion in reserves. Those are the propositions

that must be settled, and they ought to be settled before we take up the question of consolidation.

Mr. LENROOT. Let me ask you, Mr. Mondell. I do not quite understand on what theory you say they must be settled by this committee before reaching this. If the construction is doubtful, is it not a sufficient basis for proceeding upon this line?

Mr. MONDELL. I do not quite understand you.

Mr. LENROOT. If the construction is doubtful, if there be a question about it, is that not a sufficient basis for proceeding along this line, irrespective of what the committee might hold as to the absolute legal proposition involved?

Mr. MONDELL. Well, the committee, of course, could ignore the act of 1891 entirely, and that is what I did in my joint resolution 266, and what I did in my joint resolution in this Congress, No. 10. I simply proposed new legislation, taking the place of the act of 1891, and settling those questions, but the department seems to think, and I am inclined to agree with the department on that, after thinking the matter over, that it is better to give a legislative interpretation to the act of 1891 than to seem to supersede it by new legislation, accomplishing what we think the act of 1891 did accomplish and which we agreed the act of 1891 should have accomplished, whether it did or not. That is your first proposition. You must first settle the basis of your exchanges. You can not go on and provide for certain exchanges, even within a reserve, consolidating within a reserve, until you have settled the question as to whether in the State of Washington, for instance, there is some old legislation that is still in force, notwithstanding the provisions of the act of 1891. You could not provide for those consolidations within the reserves where the bases were partly surveyed lands without determining, in the first instance, that an exchange could be made on the basis of surveyed lands. So that, whether you are legislating for a State that has raised any question with regard to these exchanges, or legislating for a State that has raised no question; whether you are legislating for a State that desires to take these lieu selections out of the reserve, or take these lieu selections within the reserves, the first thing to do is to fix the basis of your exchange.

Now, the act of 1891 attempted to do that, and the department has followed a line of decisions under that law which, so far as we are concerned, are entirely satisfactory, and I think they are generally. At any rate, there must be some kind of a decision, and the department's decision, I think, is a correct one. Now, let us see whether this first section settles either of these propositions. Does it clearly provide that the act of 1891 superseded other legislation and does it provide that these exchanges can be made, whether the lands are surveyed or unsurveyed?

Now, the provisions of the bill are this, beginning at the first line and then skipping a lot: "That the provisions of the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one"—we can go from there down to the word "are"—"that the provisions of the act of Congress approved February twenty-eighth, eighteen hundred and ninety-one, are hereby declared applicable to the grants of school lands made" under various State land grants.

Now, is that language sufficient to settle the question as to whether that law superseded and took the place of and repealed all former

legislation? I do not think it does, and yet, as a layman, in the presence of lawyers, I would not want to put my judgment up against that of the attorneys of the committee, but it does not seem to me to settle the question raised by the Washington court to the effect that this legislation did not supersede the legislation contained in their granting act. "Is hereby declared applicable to the grants of school lands." I do not think it goes far enough to do that. Now, there remains one other question.

The CHAIRMAN. It goes on in line 8:

And all selections heretofore made and approved under said grants and in accordance with said act of February 28, 1891, if otherwise lawful, are hereby ratified and confirmed.

Would that change it?

Mr. MONDELL. Right in that connection, let me call your attention to this fact. Whether or not the portion you have just read is effective depends upon whether you have in the language first read given a clear legislative interpretation of the act of 1891. If you have not a clear legislative provision to the effect that that act has superseded others, then you do not cure the case by saying that all selections heretofore made and approved under said grants "and in accordance with the act," are hereby ratified, because you still leave the question open as to whether or not they were "in accordance with the act." That is what the court challenged. They said your selections can not be made in accordance with that act, because the act does not apply under certain conditions. Mr. Chairman, if those first words, the words "are hereby declared applicable to the grants of school lands," made under certain State grants—if that language legislation which follows completes the matter so far as the selecdoes settle the questions raised by the courts, then your confirmatory tions heretofore made are concerned, but if that language does not clearly settle that question, then simply saying that selections heretofore made may be confirmed "if they are in accordance with the act," it still leaves the question open as to whether they are in accordance with the act or not, and certain courts say they were not.

Understand, my State is not raising these questions: the Dakotas are not raising them, Montana is not raising them, Colorado is not raising them, but our selections are held up, because some one else has raised them. There is still the question raised by the California courts as to whether or not the act of 1891 was an act providing for exchanges, as distinguished from an act merely providing for indemnity; and there is nothing in that section—let me call the attention of the committee—there is nothing in that section which refers to that, the most important question of all.

Now, over in section 3 you have a provision, which, if it were in section 1, would perhaps clear that matter up:

That exchanges of title between the United States and States heretofore made and approved under authority of said act of February twenty-eighth, eighteen hundred and ninety-one, whereby the State relinquished its title to surveyed school lands, * * * are hereby ratified and confirmed.

Now, that confirms exchanges heretofore attempted to be made, as against the decision of the California court; but it still leaves the question open as to what you are going to do in the future.

Mr. FINNEY. Section 2 covers that, or attempts to cover, Mr. Mondell.

Mr. MONDELL. But section 2 is simply a consolidation section.

Mr. FINNEY. No. "That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests it shall be lawful for the State," etc. That provides for the future method of exchange.

Mr. MONDELL. "In pursuance of an agreement," etc. There has been no agreement between the States. We have been simply going along under the law. We have had no agreement.

The CHAIRMAN. Most of them have.

Mr. MONDELL. I know; but the trouble, if I may be allowed, Mr. Chairman, is that we get this basic legislation mixed up with the detail of minor contracts.

Mr. FINNEY. Pardon me for interrupting you, Mr. Mondell, but the idea of First Assistant Secretary Jones was that after this legislation is enacted, if it be enacted, that school sections in national forests, whether surveyed or unsurveyed, should only be exchanged under the provision of this section 2; that is to say, scattered sections should be blocked together, and the loss satisfied, or the exchange made out of other lands within the limits of the national forests.

Mr. MONDELL. Against all of which I enter an emphatic protest on the behalf of Wyoming, and I think I can say Colorado, and surely on behalf of the Dakotas, and I think on behalf of Montana. None of these States have asked the Secretary of the Interior to confine us to the forest reserves. That question has never been raised, so far as I know, in those States.

Mr. FINNEY. I am just telling you what the purpose was.

Mr. MONDELL. I understand that is the difficulty with your section 2. Your section 2 does nothing except to provide the manner in which in future you can consolidate within reserves. Now, we have no objection to the provision in section 2 providing for consolidation. It is entirely proper, but our State has not any desire to consolidate within reserves, and therefore we object to the proviso which would limit our right in exchanges, using surveyed land as a base to surveyed land. We have adopted an entirely different policy, and that is to get out of the reserves and leave the Federal Government unhampered in the reserves; we do not want to consolidate in the reserves. What we want to do, briefly, is this: What we need is legislation confirming the exchanges already made and clearly defining our rights to continue to make such exchanges, and certainly there should be no one that objects to the continuation of the policy of selecting lands outside of the reserves. From the standpoint of the forest reserves, that is much the better policy.

Mr. FINNEY. I think you still do not understand the proposition. This does not mean that the State will have lands scattered around through the reserves. This exchange in block contemplates the carving out of the forest reserve practically the land which is given to the State, of substantially equal value, etc., to what they give up and is eliminated from the forest. The State can sell it, give it away, cut the timber off, or do whatever it pleases with it.

Mr. MONDELL. I understand; and where States want to do that they ought to be given authority to do it by all manner of means, but whence comes the suggestion that the State must do that? Why should we be compelled to do it? That is interjecting an entirely

new question into this whole matter of selection, so far as Wyoming and Colorado and the Rocky Mountain States are concerned. They do not want to consolidate. They want to get out, and they have to a large extent gotten out. They do not want to consolidate in one place in the reserves or in a dozen places in the reserves. They want to get outside of the reserves, and that is what they have been doing, and that is what the act of 1891 was intended to give them the right to do; and all we are asking is that there shall be a legislative interpretation of the act of 1891 to the effect that it superseded other legislation contained in our grants, to the effect that it gives us the right to exchange surveyed as well as unsurveyed lands. We would be worse off than we are now with section 2 standing as it does and with a provision in section 3 that hereafter the only way we could make the exchanges was to make them in the future in accordance with section 2.

Mr. SMITH. Mr. Mondell, I do not understand exactly where you got the authority to make the statement that this bill proposes to compel them to take land within a forest reserve.

Mr. MONDELL. Well, if you will read section 2, section 2 says:

That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests it shall be lawful for the State——

Mr. SMITH. Shall be lawful. It does not mean you are compelled to do it.

Mr. MONDELL. If you will kindly look over here to the proviso, "that in future no such exchanges shall be made,"—and I suppose that refers to all exchanges in forest reserves—"that in future no such exchanges shall be made or approved, except as provided in section two of this act."

Mr. LENROOT. That is an exchange of title, is it not?

Mr. MONDELL. I assume so.

Mr. LENROOT. Mr. Finney, is it your understanding that exchange refers to exchange of title where the title was in the State?

Mr. FINNEY. Exchange of title where the land was vested in the State.

Mr. MONDELL. I understand; but it provides that where there is an exchange of title, as you say, we can only take lands in forest reserves. Now, your department has been holding for 20 years that you could make an exchange of title and take lands outside of forest reserves; and is there any reason why we should not be allowed to do that? Is there any virtue in a proposition that we must, where our bases happen to be surveyed lands, take them within a forest reserve?

Mr. FINNEY. Theoretically, Mr. Mondell, it would be fairer to the Government if the grant was made of two sections in place in each township. Now, when we are giving up those titles, it is hardly fair that a State should be allowed to go out and take the very choicest land outside in the way of an exchange. Now, by confining them to the forest reserves, they get practically the same character of land, and in most cases that I know of the State really will have more valuable land, because it will get the timber.

Mr. MONDELL. Mr. Finney, any man who is at all familiar with the situation in the West knows perfectly well that so far as the State is concerned it will receive greater values if it consolidates within a

reserve. That is why these coast States want to consolidate within reserves. They want to retain $100 an acre land for $100 an acre land, or better.

Mr. FINNEY. Then why do you object to it?

Mr. TAYLOR. The land outside of the forest reserve is very inferior land, is it not, everywhere now?

Mr. FINNEY. Then why the objection to this provision?

Mr. TAYLOR. I do not know why he refers to it.

Mr. MONDELL. There are many reasons why we object to it. First, because it is an entirely new idea. Nobody has heretofore proposed it or suggested that the State ought to be deprived of the very interpretation of the law that you yourselves have been following for 20 years. There are a number of reasons why the State of Wyoming has not sought, and does not now seek, to consolidate its lands in forest reserves into a single compact area or a number of compact areas. In the first place, we have few compact areas of timbered lands so located and situated that they would beyond question yield a considerable and continuous revenue. Second, the character of our forest reserves, taken as a whole, are such that on a basis of exchange of like for like, we would probably be compelled to take a considerable amount of but sparsely timbered lands in our consolidation, and such lands within a forest reserve would be manifestly of but little value to the State. Third, the State authorities and the people of the State have evidenced no disposition to go into the reserve business in competition with the National Government. And, finally, and I think conclusively, we have only about 35,000 acres left to exchange, and the State can use such an amount of land advantageously by selecting them on application and contract to purchase, thus insuring $10 an acre or upward for the lands and at the same time aiding its citizens who may need tracts which they could not otherwise conveniently secure.

We might, by consolidation, get lands in some cases of more acre value than we can get outside, but our State has steadily declined to go into the forest business, and we have, from the beginning, pursued a policy entered upon deliberately, based on the view that it is better for us to get out of the reserves, even though the lands we get outside of the reserves are comparatively poor. In any event, our people can utilize them, and they are valuable in various ways in the settlement and the development of the State, and nobody has, as far as I know, up to this blessed moment suggested that that is not a proper thing to do. Our exchanges outside of the reserves have not been approved because of any objection to our taking lands outside, but because in California the question has been raised as to the right to take lieu lands for surveyed lands, and in Washington the question has been raised as to whether or no the act of 1891 supersedes the provisions of the granting act. Our situation is, I believe, exactly the situation of Colorado. Neither State, so far as I know, has had any desire to consolidate within forest reserves. The desire has been to get out of the forest reserves and use these lands outside.

Mr. TAYLOR. I think that is true up to the present time, but I think, Mr. Mondell, our lands on the outside of the forest reserves have been culled over to such an extent that they are becoming so very inferior that unless we can pass the 640-acre homestead law and

make it applicable, and even if we do, there might be a desire to consolidate within the forest reserves, because we get much better land in the forest reserves in our State than we can on the outside.

Mr. MONDELL. That is our situation, but up to this time you have not done it, and if you do it in the future, or desire to do so, you should be given the opportunity, but I do not understand you wish to be compelled to consolidate within the forest reserves. We would rather go outside of the domain of our friend Potter, and leave him undisturbed.

Mr. TAYLOR. The monarch of all he surveys?

Mr. MONDELL. The monarch of all he surveys in that more or less sylvan wilderness.

Mr. RAKER. Is it your intention, Mr. Mondell, that it is the duty of the committee to interpret that act by legislation?

Mr. MONDELL. It is necessary for Congress to do that, in view of the fact that different courts have put different constructions on it, and in the presence of those different constructions, the department refuses to do anything.

Mr. RAKER. I thought I heard you argue here many times that Congress could not interpret legislation, but it was for the final court to determine—the Supreme Court of the United States in this instance.

Mr. MONDELL. Of course, if that is the view of the committee, why, then, I do not think we ought to have any hearings at all. We ought to conclude that this whole question can not be settled until it is settled by the Supreme Court.

Mr. RAKER. I thought you made that argument, and I just wondered.

Mr. MONDELL. I do not know that the gentleman has heard me make that argument. If a court, as in this case, puts an interpretation on an act that the department never dreamed of putting on it for years, and that no one thought of putting on it until the court in California did, why, then, there would seem to be nothing else to do but for Congress to come forward and say what the act is to-day, and provide that selections heretofore made under that interpretation are valid.

Mr. RAKER. If it should turn out—just a question now. You are very well posted on these matters. If it should turn out that the case of Hibbard *v.* Slack was the law, and the Supreme Court decision was correct, just simply from your argument is all, and the Supreme Court should so uphold that decision, of course, the interpretation of the department would be wrong.

Mr. MONDELL. Assuming the Supreme Court should eventually uphold the decision as to that particular case, that would have no effect on an act of Congress passed relative to selections made hereafter.

Mr. RAKER. Oh, sure not.

Mr. MONDELL. That is the only proposition. Neither would it have any effect, in the case of intervening adverse rights, on exchanges made prior to our legislative interpretation. Now, there are half a dozen Commonwealths where there is no possibility of an intervening adverse right. Colorado, Wyoming, the Dakotas, Montana, as far as I know, Idaho, as far as I know, Utah, as far as I know, and Washington, except on the one question of whether it supersedes the former law, so that if we pass this legislation, and the Supreme Court

should finally reach the case of Hibbard, and affirm that decision, the only cases that would be affected by it would be cases where, prior to the passage of this act, an exchange had been attempted, and an adverse right had intervened. Is that true? As a layman, is that a legal statement of the proposition?

Mr. RAKER. You have got it about correct. That being the case, then, Mr. Mondell, if there are no adverse claimants, then this legislation, as suggested by the attorney general of California and the two other attorneys general, would be all right, would it, and would not njure anybody?

As bearing on the question of legislative interpretation let me suggest that if the committee disapproves of that being done, it can scarcely support the legislation as it is now proposed, for it is clearly intended to place a legislative interpretation on the act of 1891, and to make that interpretation, so far as it is possible, retroactive. Let us see how that is done. The State of Washington has insisted, and the court there has determined, that the act of 1891 did not repeal or supersede their granting act, and that the granting act made a grant of school lands in presenti. In the first section of this bill it is declared that the act of 1891 applies to the Washington school grant. If that is intended to mean that it applies to the exclusion of the provision of the grant as they have been interpreted and to the adjustment of the grant, you have a legislative interpretation flying squarely in the face of the decision of the court.

Section 1, as I have pointed out, avoids meeting squarely the question raised in the California cases, as to whether there can be any change under the act of 1891, using surveyed lands within a reserve as a base. But in section 2 provision is made that in the future such lands may be used as bases of exchange, providing the exchanges are made in the form of consolidations within the reserves, and then in section 4 is a provision ratifying and confirming such exchanges heretofore made. Following the ordinary rules of construction the bill as it now stands does therefore construe the act of 1891 as prohibiting exchanges as distinguished from indemnity selections. It is very clear, therefore, that the bill as now presented does construe and interpret the act of 1891, or at least attempts to do so. It construes or attempts to construe the act of 1891 contrary to the decision in the Washington case and in harmony with the decisions in the California cases. In this situation of affairs it seems to me idle to say that the legislation does not contemplate an interpretation or a definition of the act of 1891 and of its scope. My objection is that it does not do it with sufficient clearness in one case and puts an erroneous interpretation upon the act in the other. While I do not and have not urged my resolution, this at least can be said for it, that if there is no wish or desire to interpret the act of 1891, but simply to settle the question of State selections in lieu of lands within forest and other reserves, the way to do it is along the line of my resolution putting it in the form of a bill, if you prefer.

Mr. MONDELL. I am frank to say that the legislation, as it now stands, in my opinion, would not cure the present situation at all, as far as we are concerned in Wyoming and in Colorado and in some of the other States. It would leave us in a very much worse position than we are now.

Now, let me suggest that I am not here to criticize this legislation without offering something, and I do not want to offer anything of my own. The joint resolution that I introduced would have been, not a legislative interpretation of the act of 1891, but new legislation covering the same ground. I am willing to agree that possibly that is not the best thing to do, but the department itself has suggested legislation that seems to me meets the case. What is it we are confronted with? We are confronted with two decisions that run contrary to the rule that has been established by the department and had been followed for years. Now, what we want to do, as I understand it, is to establish the rule of the department, so that the department can confirm all of these selections. Now, let me call your attention again to those paragraphs that I just referred to on page 49 of the first hearing—those two paragraphs.

Mr. TAYLOR. That language, practically.

Mr. MONDELL. Practically that language. You would have to change it a little. "That the amendatory provisions of the act of 1891," etc., "constitute a general scheme," etc. The first of those paragraphs applies to the situation created by the Washington decisions. "Second, that the act of 1891 was not only an act providing for indemnification as against loss, but also authorizing an exchange." Now, if you put those two provisions into this section, and then follow that with all of section 1, beginning with line 8, page 2, "and all selections heretofore made and approved under said grants, and in accordance," etc., "are hereby ratified and confirmed."

Mr. LENROOT. May I ask you to repeat the amendment you propose?

Mr. MONDELL. You have that, have you not? It is on page 49. It is the statement of the Interior Department of their interpretation of the law.

Mr. TAYLOR. Where would you put that in?

Mr. MONDELL. I would begin the bill with that. I would cut out all of this first section down to the word "and" in line 8, and I would say——

Mr. TAYLOR. Would you not refer to the act itself?

Mr. MONDELL. Which act?

Mr. TAYLOR. The act of 1891.

Mr. MONDELL. Yes; I would say that the provisions of the act of Congress, etc., are held to constitute a general scheme for the indemnification of the States as against loss occurring in the granted sections and supersedes all provisions for indemnity in grants of school lands made prior thereto. I do not know whether you would want to follow that exact language, but that is really what should be done if you want to establish that principle as the law.

Then section 2:

> That the said act of February twenty-eighth, eighteen hundred and ninety-one, shall be held to have been an act providing not only indemnification against loss, but also authorizing an exchange * * *

Mr. LENROOT. Now, Mr. Mondell, upon that proposition, you are aware, probably, that we have no right to make a legislative construction, that would be in any way binding upon the courts, of an antecedent act to construe our own intentions.

Mr. MONDELL. I realize that. Of course, you understand, Mr. Lenroot, that except in the cases in California and Washington there

are no contests or controversies over these questions anywhere. The department has simply held up all selections, pending some action by Congress interpreting or confirming under its interpretation all selections already made, and what is equally important, laying down a rule for the future, because there are still exchanges to make.

Mr. RAKER. Mr. Mondell, that provision would not in anywise affect the claimants to any of these lands, under the law, if they had any claim, would it?

Mr. MONDELL. No. As to the future it fixes the law.

Mr. RAKER. There seems to me, from what I hear from all here, that practically all of the school land is ready for disposition. Applications have practically all been made.

Mr. MONDELL. My State has quite a good many thousand acres still to select, and I presume that is true of all mountain States that have been making their selections from time to time. Since the department held up the selections, they have not been filing their selections, because they have not felt it was worth while to do it. While therefore the bulk of our exchanges have been made, we still have about 30,000 acres to select.

Mr. RAKER. The State claims this land or have third parties made the application to the State; has application been made for third parties?

Mr. MONDELL. In our case exchanges are always made on application. An individual applies to have a certain piece of land selected by the State, in the majority of cases, agrees to buy it.

Mr. RAKER. Then practically all these applications pending are at the request of individuals who have taken a piece of Government land and are asking that they may hold it in exchange of the base land?

Mr. MONDELL. As a matter of fact they are really buying land of the State in that way. We have a limit of $10 an acre, and while the lands we select are not in the majority of cases worth that much, you understand, and everyone who has lived in a public land State understands, that there is a demand for a certain amount of land which has heretofore been supplied as scrip.

Mr. RAKER. Surely I do.

Mr. MONDELL. And our State practically uses its selections as scrip is used. If you want to buy a piece of land that you feel you can afford to pay $10 an acre for, you apply to the State to have it selected, and most of our selections in Wyoming are made in that way now.

The CHAIRMAN. Is that good practice for the State to drag out selections so, so long? Could there not be some legislation passed indicating a certain time that they shall make their selections?

Mr. MONDELL. Hardly, I think. I do not think that is necessary, Mr. Chairman, because in the case of our State our selections would have all been made by this time if selections had not been held up about three years ago.

Mr. TIMBERLAKE. Why were they held up?

Mr. MONDELL. In Wyoming, Colorado, and in the Dakotas, not because there was any controversy there, but because in California and Washington there were questions raised which had, the department held, affected our selections. The department has gone so far that

between the two decisions referred to it refuses to confirm selections that are not affected by either one of them. The bulk of our selections in Wyoming are on unsurveyed bases, and therefore not affected by the California decisions.

Mr. RAKER. Have you any affected by the survey bases?

Mr. MONDELL. I say the bulk of them are unsurveyed, but they hold them up just the same as they hold the others up.

Mr. RAKER. But have you any of the surveyed bases?

Mr. MONDELL. Yes.

Mr. RAKER. Are there any contests——

Mr. MONDELL. No.

Mr. RAKER. Between the selectors and——

Mr. MONDELL (interposing). None in any of the mountain States, and, as far as I know, none anywhere, except in California. That is my information. There has been no contest.

Mr. RAKER. No one claiming?

Mr. MONDELL. Adversely to the base, no.

Mr. RAKER. To own or have any right to these lands, holding that the State has no right to make exchange?

Mr. MONDELL. That question never has been raised, so far as I know, in any of the mountain States.

Mr. STOUT. Has not your State, through the initiative of the land board, without any application being made by citizens for public leases of land, gone out on its own initiative and selected lands—tracts of land?

Mr. MONDELL. Years ago we selected some lands in lieu of forest reserves with the idea of irrigating them, but we found we could not do that under our constitution, so we came back to Congress and got lieu lands for the lands so selected. In Wyoming for years the State has not made a selection of any land except on application.

Mr. STOUT. One more question. Reverting to your contention that the State should have the privilege of going outside the forest reserve and making selection, you would not deny to the State the privilege of making selection within the forest reserve, you would have both?

Mr. MONDELL. Yes, the only part of section 2 I object to is the proviso which would confine the State to the reserves——

Mr. STOUT. To that one——

Mr. MONDELL (interposing). And if you were to modify the legislation as I have suggested, eliminate your first section, the definition of the act, followed by confirmation, then you could cut out all the first part of section 2 and leave section 2 trimmed down to the bare proposition that the State could consolidate within the reserves; you can put that in three lines. That is all you would have left, providing you settle the first and fundamental proposition ——

Mr. LENROOT. Let me ask you on that. In your joint resolution it would have left the act of 1891 in the air, just as you say?

Mr. MONDELL. It would have left what?

Mr. LENROOT. It would have left the act of 1891, or did you have two propositions?

Mr. MONDELL. Yes; it would.

Mr. LENROOT. Just as uncertain as they are now?

Mr. MONDELL. That was new legislation. It had no reference to anything which went before, except as to confirmation of selections already made.

The Secretary of the Interior be, and he is hereby, authorized to accept from any State having within its borders surveyed or unserveyed lands included in military, Indian, or forest reserves proper and satisfactory transfer of any of such lands which the State may desire to exchange for other lands and to issue in lieu thereof patents to an equal acreage of vacant, unappropriated, unreserved, nonmineral lands, etc.

That settles absolutely the question of survey and nonsurveyed.

Mr. LENROOT. Does it settle anything? Is not your resolution, for all practical purposes, identical with section 2, except that it permits you to go outside of the forest reserves instead of in?

Mr. MONDELL. No. Well, your section 2——

Mr. LENROOT (interposing). Authorizes an exchange. Is that not what it does?

Mr. MONDELL. Yes; well, you do cover it in a way in section 2, but what I am suggesting is this: You are covering it in connection with an entirely different thing, and you are not covering it in connection with confirmation. You are covering it in connection with a new method of consolidation. It seems to me, the way to make this legislation logical and clear is to provide your first section, first, for the settlement of the questions of sections which have been raised by the courts, and then confirm under that determination, and then follow that with anything you like with regard to consolidation within forest reserves. That is a very simple matter after you have settled the basic proposition. You do, in a way, in section 2, bring in the second of the two propositions, but you do not do it in connection with settlement of the main issue.

Mr. RAKER. Suppose this bill confirms in advance all approvals heretofore made by the Secretary of the Interior?

Mr. MONDELL. I do not think so.

Mr. RAKER. That is what it says, your bill says so, and this too.

Mr. MONDELL. If you will follow me we will not take up so much time.

Mr. RAKER. Let me see yours. It says:

Provided further, That all such exchanges heretofore made and approved by the Secretary of the Interior are hereby ratified and confirmed.

You could not get any stronger language than that.

Mr. MONDELL. I guess you were not in when the chairman called my attention to that provision in the bill before the committee, and I called attention to what preceded it. What selections are confirmed? Why, selections in accordance with the act of February 28, 1891. What is the act of February 28, 1891? You have not settled that. You say that you confirm selections made in accordance with the act, but you have not got anywhere if you have not determined what the act is, and the courts have——

Mr. RAKER (interposing). That is not what I am getting at. In your resolution, Mr. Mondell, introduced here December 6, 1915, on page 2, lines 10 to 12, you say this:

Provided further, That all such exchanges heretofore made and approved by the Secretary of the Interior are hereby ratified and confirmed.

Mr. MONDELL. But, Mr. Baker, in advance of that the legislation fixes the conditions under which those exchanges can be made.

Mr. LENROOT. By agreement only, just as section 2 does.

Mr. MONDELL. You are speaking of my resolution?

Mr. LENROOT. Of your resolution.

Mr. MONDELL. You understand, I have not asked the committee to consider my resolution at all.

Mr. LENROOT. He was only referring to your resolution.

Mr. RAKER. I was referring only to your resolution.

Mr. MONDELL. I have not asked the committee to adopt my resolution.

Mr. RAKER. What I want to get at is this: You can answer it, I know.

Mr. MONDELL. Right there I want to say to you that my resolution does, as a matter of fact, follow. Now, I do not care to have the committee adopt it; I do not think that is the right way to legislate, but that would settle the thing, because it provides, first, that the Secretary is authorized to accept from the States lieu bases, surveyed or unsurveyed, and then it provides that all such selections heretofore made are validated.

Mr. RAKER. No, you do not. You do not refer to selections at all.

Mr. MONDELL (reading):

Or such exchanges heretofore made and approved by the Secretary of the Interior are hereby ratified and confirmed.

Mr. RAKER. Of course, there is a distinction between the selection and exchange.

Mr. MONDELL. Of course, it is hardly worth while to analyze the last word in a piece of legislation hurriedly drawn and which I have not asked the committee to adopt.

Mr. RAKER. I did not mean that.

Mr. LAFOLLETTE. Does this meet your idea, all selections relying on that act?

Mr. MONDELL. I am here simply for the purpose, if I can, of aiding your committee in getting a piece of legislation which will be clear, logical, definite, and conclusive, rather than one that may necessitate another decision of a court as to what it means.

Mr. LENROOT. Is it your interpretation that these words, "In accordance with said act," that would mean legally in accordance with said act, and the parties were merely relying upon the act, that the act meant a certain thing when it did not?

Mr. MONDELL. I do not see how it could be held that those words, that the provisions of the act are hereby declared applicable to school grants, how that settles either of the questions which have been raised by the courts. I think it leaves them right where they were, because it still leaves some one to determine what that act provides. I do think, however, it was intended that language should be conclusive in settling the question raised by the court in Washington.

Mr. STOUT. Mr. Mondell, like you I am not a lawyer. You are more of one than I am, but I am curious to know how we can validate the acts which were done under a law that the courts have said is illegal.

Mr. MONDELL. You can validate in the absence of any adverse claim or right.

Mr. STOUT. Well, in two States the adverse claim or right has already been set up.

Mr. MONDELL. We would not affect the situation in those States so far as those cases are concerned.

Mr. STOUT. Then not having been set up in these other States we can validate it, we can beat the court to it. Is that it?

Mr. MONDELL. It would not matter what the court decided as to that old statute if we now declared what the law is.

Mr. STOUT. It is more important, I think, that we contrive some means for legalizing what has been done than it is a scheme for future selections, because most of the selections have already been made. That is the locations for the selections.

Mr. MONDELL. I do not think you do legalize, I do not think you confirm by your first section. I can not see that you do.

Mr. FINNEY. What you are seeking to do is to have Congress make a legislative declaration as to what the effect and intent of the act of 1891 was. Am I correct in that?

Mr. MONDELL. To a certain extent, and that is exactly what you were attempting to do in section 1, but you do not do it.

Mr. FINNEY. I find that in drawing that section 1 we followed the provisions of an act of Congress passed in 1902 relating to the State of Utah. Utah, you know, was admitted to the Union in 1896, and their enabling act was silent on the question of these exchanges, or at least it did not refer to the act of 1891. So May 3, 1902, Congress passed an act to the effect that all the provisions of the act of Congress approved February 28, 1891, which provides for the selection of lands for educational purposes in lieu of those appropriated for other purposes, be, and the same are, hereby made applicable to the State of Utah. That is on page 41.

Mr. MONDELL. Yes; and I think you have left the situation in the State of Utah where a court could raise exactly the question they have raised in California, because while Congress intended to make it applicable as Congress understood it, and as it has been uniformly enforced, the courts came along and said such was not the proper interpretation of the act. So I do not think Utah is any better off than the balance of the States if anybody raises a question.

The CHAIRMAN. It is now a little after 12. Can you round out your statement in a few minutes?

Mr. MONDELL. Yes; I can conclude now by simply saying this——

Mr. TAYLOR. Would it not be a good idea, Mr. Mondell, for you to draft in complete form the idea you have?

Mr. MONDELL. I think Mr. Finney could do that.

Mr. TAYLOR. Mr. Finney is in harmony with you, or you with him, on his theory here. What is your idea about it? Do you think there is anything in what he says? If so, can you not agree upon the language? The department, or those people in the department which agree with the departmental decisions and this conclusion here, would be very much retarded to have Congress ratify and approve our holding.

Mr. TAYLOR. Is there any harm now in doing exactly what Mr. Mondell thinks we ought to do to save the question?

Mr. FINNEY. I do not think it would do any harm, but I do not know how much good it would do. Of course, if the courts should rule that the department was wrong, they might also hold that Congress was making an erroneous construction by putting this in.

Mr. MONDELL. But, Mr. Finney, no decision of the courts would affect any case except ours, where a selection had been made prior to the act of Congress, and where, prior to the act of Congress, there had been an intervening adverse right.

Mr. FINNEY. The same thing would be true, I think, as to what we have drawn.

Mr. MONDELL. Providing—that is the proposition—that in your first section you have really done anything. I am very greatly impressed with the idea that you really have not done anything except, perhaps, settled the contention raised by the State of Washington. You have followed the Utah act, which simply provided that a certain act shall apply to Utah.

Mr. TAYLOR. But that act is ambiguous and unintelligible. It simply passes up to some court to say whether it is an ambiguous and an unintelligible act.

Mr. FINNEY. I should be very glad to draw something up along the line you have suggested and hand it to the committee.

Mr. LA FOLLETTE. Have you taken into consideration all the time he claims as to the difference in the granting act in Washington and some of the other States, one being granted in præsenti and the other in futoro?

Mr. MONDELL. No; I have not taken that into consideration, and I am frank to say that I am not especially familiar with the language of that act. I know what the contention was, the contention of the State in connection with the act. Now, I have no disposition to deprive Washington of any advantages that she may have under a decision that still retains in force the provisions of her granting act, and if there is a situation there that ought to be cured, it ought to be cured by special provisos in the act. So far as the other States are concerned, they are none of them raising that question, although I understand the language in a number of the acts is the same.

Mr. LA FOLLETTE. There are two or three in a similar condition; three other States.

Mr. MONDELL. But none of them have raised the contention, because, as a matter of fact, the act of 1891, take it as a whole, is more favorable than any of these State grants themselves, and, as a matter of fact, it being more favorable, most of the States have not raised the question.

Mr. LA FOLLETTE. What I wanted to ask was if your amendment to section 1 would cure our attorney general's contention in that respect?

Mr. MONDELL. I do not know what his contention was.

Mr. LA FOLLETTE. You see we have many cases in our State that are on all fours with the California situation, with the exception that our State has not sold any of the land, but there are a great many selections which have been made by homesteaders on 16–32, 16 and 36, that are affected to the extent that the State claims that was a grant to them in presenti, and that they had the right to the land and that if these are allowed to the Government—these homestead entries—that they should be given land in lieu thereof.

Mr. MONDELL. You see the trouble with your Washington decision is this, that carried to its logical conclusion and superimposing upon that decision the decision in the case of California, you would not have any rights in reserves, unless you get them under your specific act, because if you hold that your grant is a grant in presenti, and the forest reserve comes along on top of it and you put the California decision on top of that, then you have not any right for a lieu selection, because you have not lost any lands.

Mr. LA FOLLETTE. Our attorney general objected to this coupling up of sections 1 and 2 together here, and because we do not accept the provisions of section 1, will not allow us to take advantage of section 2. That is the objection made by our State in regard to this particular regulation.

Mr. TAYLOR. By reason of the cloud cast upon this law you do not think making something applicable to that law settles anything?

Mr. MONDELL. I do not see how it can.

Mr. RAKER. It must be a sure thing that all Mr. Mondell is figuring on are future exchanges.

Mr. MONDELL. No; to the contrary.

Mr. RAKER. Because unquestionably it has been so many times determined by this committee, and if it has not been, it has been determined by all the courts that we can not fix the determination of the statute to affect price.

Mr. MONDELL. No one questions that. I want to make one thing clear. My contention is that your provisions from line 8 down, in section 2, which are intended to confirm and ratify, do not, as a matter of fact, do anything of the kind, because they provide that selections made in accordance with the act of February 28, 1891, are ratified, and your court has said that so far as those selections are based on surveyed lands, they are not authorized under that act.

Mr. RAKER. Let me see just a moment.

Mr. MONDELL. They are not authorized under the act and to simply say that applications made under a certain act which your court interprets as noneffective are confirmed, leaves you right where you were. But if you were to say that the provisions of the act of Congress of 1891 superseding other legislation and providing for indemnity and exchanges shall apply to school grants and that all exchanges under that are hereby confirmed, you would fix it absolutely.

Mr. TAYLOR. There would be a statement of actually what it is.

Mr. MONDELL. Of what the law is.

Mr. TAYLOR. Notwithstanding what the courts might have said that it was not.

Mr. LA FOLLETTE. Do you think this provision of section 4 that provides that sections 1 and 2 of this act shall be applicable only where the State shall by constitutional and legislative enactment signify its assent to the terms of said act of 1891, as herein declared and amended—do you not think that our State would be barred from taking any selections under section 2, even though No. 1 does not mean anything unless our legislature should enact laws saying they were willing to accept section 1?

Mr. MONDELL. I will say that I have not gone carefully enough into that provision to have a very clear idea of it, but so far as I have gone into it it seems to me there are two objections to it—first, that it is unnecessary, which ought to be valid; and, second, that it would delay in some cases Heaven only knows how long before those States that are not questioning this law could come under it. I do not know what kind of legislation it would be necessary for us to secure in Wyoming. The legislature meets every two years, and we would have to wait until the legislature acted in order to obtain land selections, which, so far as we are concerned, we have never questioned or contested. Our State land commissioner says that he can not understand the necessity for it and that in our case he does not know how we would meet it.

Of course there have been questions as to the rights of certain officers in the States to make these exchanges. That is not a matter we are interested in. We are interested in it, but it is not a matter which we can legislate on. That is a matter for the State to settle.

Mr. LA FOLLETTE. In any legislation we have on the subject involving the transfer or exchange, we are certainly interested in the right of the officer of your State to get back title from the Government.

Mr. MONDELL. I understand, but it says in these transfers, in the law of 1891—I do not know just where it is.

Mr. LA FOLLETTE. You mean the waiver proposition?

Mr. MONDELL. No, but the provision that the transfer shall be legally made, the provisions of all these acts.

Mr. LENROOT. Is there not something in the law of 1891 as to transfers?

Mr. FINNEY. Waiver of a claim.

Mr. MONDELL. I think, in conclusion, Mr. Chairman, that in your first section you ought to strike out everything above the word "and" in line 8, and insert approximately the language in paragraphs numbered 1 and 2, page 49, in lieu of the language stricken out, and complete the proposition of interpretation, definition, and confirmation in one section, following with the legislation necessary to provide for these consolidations. If you made the change that I suggested in that first section, you could very greatly shorten your second section, because then there would be the simple matter of providing for consolidations.

The CHAIRMAN. If you will, Mr. Mondell, reduce your views to concrete amendment, so when we go over this section we may have the benefit of them, we shall be much obliged.

We will hear Mr. Hawley at this time.

Mr. MONDELL. I desire to insert in the record a letter from Hon. S. G. Hopkins, commissioner of public lands of our State, on the provisions of this bill:

STATE OF WYOMING,
OFFICE OF COMMISSIONER OF PUBLIC LANDS,
Cheyenne, February 24, 1916.

Hon. F. W. MONDELL, M. C.,
Washington, D. C.

MY DEAR MR. MONDELL: Your letter of February 9, with copy of H. R. 8491, which proposes a remedy for our lieu-land selections where forest-reserve base is used, has had my attention.

Section 1 of this proposed act is very clear in its intent and purpose, also section 2; but section 3 of the proposed act is rather clouded and I can hardly understand its purpose.

Section 1 of the proposed act does not distinguish between sections 16 and 36 in the forest reserve where they have been surveyed or where they have not been surveyed, but section 3 seems to refer to exchanges of title between the United States and the State where the State relinquished title to surveyed lands in the forest or other permanent reservations, and then provides:

"That in future no exchanges shall be made or approved except as provided in section two of this act."

I am in receipt of a letter from the Commissioner of the General Land Office in reply to an inquiry of mine relative to this legislation, in which he inclosed a copy of a letter from Assistant Secretary of the Interior Jones to the chairman of the Public Lands Committee of the Senate, and in discussing section 3 of this act, Mr. Jones says:

"Section 3 of the bill is confirmatory and is designed to permit the approval and passing of title to the States of indemnity selections heretofore made in lieu of surveyed school lands in forests or other permanent reservations. It is particularly important to the States which have made such lieu selections and to those who have

purchased the selected land from the States in anticipation of the consummation of the exchange."

Then the Secretary states that it is inserted there because of some agreement between the Secretary of the Interior and the State of California which has been consummated and approved by the Legislature of the State of California. Such a condition does not exist so far as the State of Wyoming is concerned, and therefore this clause, if intended to be remedial for the State of California, should be limited in this bill to its application to the State of California but should not be left in the form that will make this section applicable to this State.

Most of the school sections in the Wyoming forest reserves have been surveyed; therefore, under the proviso in section 3, selections made hereafter using the school sections in the forest reserves as base therefor, would have to be made in a compact body within the forest reserve wherein lay the base lands—that is just what the State of Wyoming does not wish to do. We want to make these selections in lieu of the forest reserve school sections wherever they may be desired by those who are willing to pay the State the sum of $10 per acre, or more, for such lands. It was evidently intended by the Congress, in granting the lands to the State, that the State should receive lands that were worth $10 per acre, because it limited that as the minimum price for which the lands granted to the State could be sold; therefore, in selecting lands in lieu of the forest reserve sections of school land, the State should be permitted to place the selections where they will bring to the State the greatest revenue and, at the same time, enable the State to develop its farm and ranch industries.

I may have placed an entirely wrong construction upon this section 3, or the proviso therein; but if I have construed it correctly, then the application of section 3 should be restricted to California, or those States to which it applies, rather than to this State where it does not apply and where its operation would be objectionable.

So far as this State is concerned, Mr. Mondell, section 1 of the proposed act will cover the entire ground and will give this State the remedy desired.

Referring to section 4 of the proposed act, you will recall that our legislature (see sec. 608, Compiled Statutes of 1910) has authorized exchanges to be made by the State board of land commissioners whenever the Government of the United States shall and will permit and allow the State to select and have patented to it an equal area of other lands in lieu of the lands so reconveyed to the United States. Now, the question in my mind is whether this section 4 is drawn in such form as will require additional legislation by the State before the selections applied for can be approved by the Interior Department. It would seem to me that section 4 could cover the ground desired by the department and still not require additional legislation by this State by simply providing that the provisions of the proposed act should apply where the State shall have, by constitutional legislation, authorized exchange of lands with the Federal Government without requiring legislative enactment by the States to "assent to the terms of said act of 1891 as herein declared and amended."

I think you will understand the point that I make, that this section 4 should be in general terms rather than in specific, because our legislature has in general terms authorized the exchanges irrespective of what law enacted by Congress authorized such exchanges.

As you know, I am very anxious for this legislation. We now have pending in the departments selections where forest reserve base has been used amounting to approximately 80,000 acres; and these lands have been selected in small lots over the State where farmers and ranchmen have put up a guaranty deposit that when the lands are offered for sale they will bid the minimum price, to wit, $10 per acre. The State is not only losing the interest on the purchase price of this 80,000 acres of land, at $10 per acre or more, but it is losing the benefit of the development and improvement of these lands, because until such time as the State gets title to the lands and they are offered for sale and purchased by the applicant, the applicant is not in a position to improve or develop the lands because he is uncertain as to whether he will be the successful bidder or not, as all lands must be sold at public auction and to the highest bidder.

I trust, Mr. Mondell, that you will be able to secure this remedial legislation at a very early date, and that section 3 in so far as it is applicable to this State be eliminated, and that section 4 be broadened so as to come within the provisions of the legislation which our State has already provided, so as to avoid the unnecessary delay in the clear listing of the pending selections until additional legislation may be had by our State legislature.

Very truly, yours,

S. G. HOPKINS, *Commissioner.*

STATEMENT OF HON. WILLIS C. HAWLEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON.

Mr. HAWLEY. Mr. Chairman and gentlemen of the committee, upon receipt of a notice from the chairman of the committee that a hearing would be had to-day on this bill, I sent a copy of it to the governor of the State of Oregon, and what I have to say will be very largely to read his letter and the letter from the clerk of our State land board, together with just a brief comment.

The letter from the governor is as follows:

STATE OF OREGON, EXECUTIVE DEPARTMENT,
Salem, March 21, 1916.

MY DEAR MR. HAWLEY: I have your letter with a copy of H. R. 8491, which I have read carefully, and also submitted to the secretary of the State land board, Mr. G. G. Brown, a letter from whom I am inclosing herewith.

A law enacted along the lines suggested in this bill would certainly be inimical to the best interests of the State regarding public lands.

I think Mr. Brown's letter explains matters pretty fully.

The State will have no special representative present, as we will trust to our delegation to look after our interests.

Thanking you for your kindness, and with best personal regards, I am,

Faithfully, yours,

JAMES WITHYCOMBE, *Governor.*

Hon. W. C. HAWLEY,
House of Representatives, Washington, D. C.

I also read the following letter from Mr. G. G. Brown, clerk State land board:

STATE OF OREGON,
OFFICE OF THE STATE LAND BOARD, SALEM.

Hon. JAMES WITHYCOMBE,
Governor of Oregon,
Capitol Building.

DEAR GOVERNOR: Referring to communication of Hon. W. C. Hawley, dated March 16, 1916, and inclosing copy of H. R. 8491, beg to say that:

Section 1 of this resolution provides for the ratifying and confirming of selections heretofore made by the State under the acts of 1889, 1890, and 1891, and for the approval of all pending selections under said acts.

Section 2 provides for the selection of unappropriated, nonmineral lands of approximately equal value, within the present boundaries of national forests within the State, in lieu of surveyed or unsurveyed school sections within such reserves.

Section 3 provides for the ratification of selections heretofore made in lieu of surveyed school sections in reserves and for the approval of all pending and unapproved selections of the same character, with the proviso that no future exchanges shall be made except as provided in section 2, which we understand to mean that all future selections shall be made in lieu of forest reserve base only and that all lands selected shall be located within forest reserves. This would prevent the State from hereafter securing indemnity lands for school sections lost to the State by reason of fractional township mineral lands, or school sections homesteaded before survey, and from making selection of any indemnity lands, except those included in national forest, which would materially lessen the demand for base lands. Section 2 also provides that lands selected must be of approximately equal value to those relinquished, and while it may be necessary to consent to this provision in the selection of a State forest, we feel that it would be unjust to the State to have all future selections curtailed by this requirement.

Section 4 provides that sections 1 and 2 shall only apply where the State shall have, by constitutional enactment, signified its assent to the terms of said act of 1891. This would appear to be an unnecessary burden to place upon the State as the Act of Congress of February 14, 1859, in section 4, covers this point.

Very truly, yours,

G. G. BROWN,
Clerk State Land Board.

MARCH 21, 1916.

Mr. Brown has been clerk of our land board a long time and is very familiar with the practice of the State and of the land board in making selections and disposing of the land. Our school lands yet unselected are very large in area and we dispose of them as rapidly as possible for the benefit of the school fund. We desire such legislation as will enable us to reduce these lands to such a possession on our part as will enable us to dispose of them and get the money to put in the school fund.

Mr. Sinnott, a most efficient member from our State, is a member of this committee, and he will undertake, when the discussion is up, to present to you the arguments in support of these contentions of our land department and the governor of the State.

All that we desire is a fair opportunity, under proper regulations and conditions, by which we can gather together in some manner out of the 13,000,000 and more acres of forest reserves, of which you have already heard a great deal in the course of this session of Congress, the lands belonging to the State that are scattered all through them.

Mr. TAYLOR. Are not these exchanges now being held up?

Mr. HAWLEY. That is my understanding.

Mr. TAYLOR. There is none of them being confirmed or being claimed now by the department, is there?

Mr. HAWLEY. That is my understanding.

Mr. TAYLOR. Then you have got to have some legislation, have you not, to get anywhere?

Mr. HAWLEY. We are not opposing the legislation. We are favoring the legislation, but in such form as will enable us to make the best use of the grants heretofore made by the Government to the State for our school purposes.

Mr. TAYLOR. Do these gentlemen suggest the amendments or form of bill they think ought to be enacted?

Mr. HAWLEY. They do not.

Mr. TAYLOR. They just criticize this bill without offering anything in lieu of it?

Mr. HAWLEY. They make suggestions as to modifications in the bill, knowing that the committee has great wisdom and will consider the suggestions made and work out the language.

Mr. TAYLOR. With their superior wisdom to criticize it would seem highly appropriate, at least, for them to suggest the language they think would cure the present situation.

Mr. HAWLEY. Mr. Taylor, I do not understand that the letters were offered in that spirit. Here is a bill drafted in very general terms to cover a very large area of country. Here is a particular area in which the language, as drafted, works a hardship which we did not think was intended by the committee, and that to bring that to the knowledge of the committee would be sufficient to induce the committee to put in the proper language to cure whatever inequality there might be existing in the bill toward our situation.

Mr. TAYLOR. But you might suggest to them that we are not mind readers and really do not know what they would like to have in there.

Mr. LENROOT. Have you examined this bill yourself?

Mr. HAWLEY. I have read it over.

Mr. LENROOT. Do you agree with the construction given by that letter?

Mr. HAWLEY. I would rather reserve an opinion on that.

Mr. LENROOT. I should like to get this in the record. You are familiar with the decision of the Supreme Court, rendered February 21 last, the United States *v.* Morrison, where, so far as Oregon is concerned, they expressly decided the question raised in Washington so far as that State is concerned?

Mr. HAWLEY. In a general way.

The CHAIRMAN. Gentlemen, here is a letter from Mr. William R. Andrews, who signs himself "Attorney for Protestants." It seems that he represents the homesteaders, and he is a member of the firm of Copp & Andrews. Mr. Copp is quite a noted land lawyer. Mr. Andrews asks that a short, brief pamphlet of three or four pages go into the record. Without objection it will be inserted in the record. It has certain citations which may be of value to the committee. It is as follows:

COPP & ANDREWS,
ATTORNEYS AND COUNSELORS AT LAW,
Washington, D. C., March 30, 1916.

Hon. SCOTT FERRIS,
Chairman Committee on the Public Lands,
House of Representatives, Washington, D. C.

SIR: I have the honor to transmit herewith protest against House bill No. 8491, and to respectfully ask that the same be incorporated in the report of hearings upon said bill.

Very respectfully,

WM. R. ANDREWS,
Attorney for Protestants.

[In the Congress of the United States. Before the Committees on Public Lands of the Senate and House of Representatives. In the matter of Senate bill No. 2380 and House of Representatives bill No. 8491.]

PROTEST ON BEHALF OF PERSONS CLAIMING ADVERSELY TO CERTAIN STATE INDEMNITY SCHOOL-LAND SELECTIONS AGAINST PORTIONS OF THE BILLS THAT SEEK TO INVALIDATE ADVERSE RIGHTS BASED UPON PAST TRANSACTIONS AND TO DECIDE BY LEGISLATION A QUESTION OF STATUTORY CONSTRUCTION INVOLVED IN A CASE NOW PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Senate bill No. 2380 and House bill No. 8491 are exactly similar and each is entitled "A bill to amend an act entitled 'An act to amend sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United States, providing for the selection of lands for educational purposes in lieu of those appropriated,' and to authorize an exchange of land between the United States and the several States."

The evident purpose of these bills is to confirm selections of State school lands made under the provisions of the act of February 28, 1891, to declare said act applicable to the grants contained in the acts of February 22, 1889, July 3, 1890, and July 10, 1890, and to permit an exchange of certain lands between the United States and the several States with a view of eliminating school lands from the national forests.

The protestants have no objections to the proposed law in so far as its main features are concerned, but they do earnestly protest against the passage of the bills in their present form because they are retroactive and purport to invalidate existing adverse claims by overturning the interpretation placed upon the act of February 28, 1891, by the courts of last resort of several States and the United States Circuit Court of Appeals and to bind the Land Department and the courts in a matter of statutory construction affecting transactions which occurred and rights of action which accrued prior to the passage of the proposed enactment.

Section 1 of each bill provides, inter alia (p. 2, lines 11 to 15): "That all pending and unapproved selections heretofore made under said grants and in accordance with said act [act of 1891], if found otherwise regular, and for lands subject to selection at date of approval, may be approved under the provisions of said act."

Section 3 provides, in part (p. 4, lines 2 to 4): "And all pending and unapproved exchanges of like character at date of approval may be in similar manner adjudicated and approved."

The declaration in the bills that the act of February 28, 1891, is applicable to the several school-land grants therein enumerated is thus made to apply unrestrictedly to all selections, whether approved or unapproved, and whether or not free from adverse claims.

Whether the act of 1891 does apply to the school-land grants is a question of law that for years has been litigated in the courts and before the Land Department, and is now involved in a case pending in the Supreme Court of the United States. Many persons have proceeded upon the theory that under a correct construction of the law the act of 1891 has no application to the school-land grants, except as affecting the rights of settlers before survey; that the attempted selections of indemnity lands under said act were wholly without authority of law, in consequence of which such lands were legally vacant public lands, subject to disposition under the general land laws of the United States; and, relying upon this view of the law, these persons have taken the necessary steps under the land laws and regulations to acquire title to the lands.

The question is, therefore, whether Congress will by legislation decide this question of statutory construction between these adverse litigants or whether it will so amend the bills as to reserve to the Land Department and the courts the performance of this judicial duty, and not deprive these adverse claimants of rights of action in respect to transactions that occurred prior to the passage of the bills.

The Interior Department has held that the act of 1891 applies generally to the school-land grants and has permitted indemnity selections thereunder, but the courts of last resort of several States and the United States Circuit Court of Appeals have held the contrary. (See State *v.* Whitney, 6 Wash., 323; Deseret Water, Oil & Irrigation Co. *v.* State of California, 167 Cal., 147; Hibberd *v.* Slack, 84 Fed. R., 890.)

In the first instance adverse claimants can assert their claims in the Interior Department. If the cases are there decided against them, as has been done for a number of years, they can then proceed in the courts, but not until after the approval of the selections. If, on the other hand, the Interior Department should reverse its present ruling and cancel the selections made under the act of 1891, the States, or their transferees, would likewise, after the patenting of the lands to the adverse claimants, be entitled to have the courts review the ruling of the Interior Department.

The case of the Deseret Water, Oil & Irrigation Co. *v.* State of California, supra, is now pending in the Supreme Court of the United States (No. 679, October term, 1915), and in due course the true and final meaning of the act of 1891 will be judicially determined. This in itself furnishes a cogent reason for not passing the bills in their present form, for such action would be nothing more or less than an attempt to forestall the decision of the Supreme Court of the United States upon a disputed question of law in a case now pending.

The provisions of the bills objected to by the protestants are of doubtful validity, to say the least.

In 6 Am. & Eng. Ency. of Law, 1033, 1034, the rule relating to legislation of this character is stated as follows:

"Declaratory statutes, therefore, which are defined to be 'statutes passed in order to put an end to a doubt as to what is the common law, or the meaning of another statute, and which declare what it is and ever has been,' are without the sphere of constitutional legislative action in so far as any retrospective operation is concerned, so that such acts can neither overturn an interpretation already given by the courts, nor bind the latter, with respect to the application of the original statutes, to transactions which occurred or rights of action which accrued prior to the passage of the declaratory act."

If the proposed legislation is desirable and beneficial in its main features, surely Congress does not wish to obscure it and perhaps endanger its operation by the inclusion of provisions that are unconstitutional and void. Nor would it be fair and just to the adverse claimants to thus burden them with additional litigation to determine whether Congress can lawfully legislate away their rights of action.

If the act of 1891 does not apply to the school land grants, and if the rulings of the Interior Department are wrong and those of the courts are right, many persons are claiming titles to lands under void indemnity selections. In such event Congress may feel a moral obligation to confirm the selections, but there certainly should be no attempt to affect selections against which there are adverse claims and to now grant to persons claiming under void selections lands which legally belong to others.

The protestants do not wish to be understood as here arguing the question as to the applicability of the act of 1891 to the grants; they are simply asking Congress not to

interfere with their rights to present their cases to the appropriate judicial or quasi-judicial tribunals.

An addition of the following amendment would not interfere with the main objects of the bills and would protect the rights of the adverse claimants:

"SEC. 5. That the provisions of this act shall not in any manner affect the right of any person who has applied to enter, file upon, locate, select, or purchase under any land law of the United States, or who has made a valid settlement upon any land embraced in an indemnity school land selection made under the said act of February twenty-eighth, eighteen hundred and ninety-one, from asserting, in the courts or the Department of the Interior, his claim to a superior right to such land by reason of such application to enter, file upon, locate, select, or purchase, or by reason of such settlement, nor shall said provisions in any wise affect any valid adverse right or rights of action that may have accrued prior to the passage of this act."

In conclusion, it is submitted that the bills should not be passed in their present form because this would amount to an attempt to decide by legislative enactment a controverted matter of law that is properly cognizable in the first instance by the Interior Department and thereafter by the courts, thereby preventing or attempting to prevent the adverse claimants from litigating their rights in judicial tribunals

Respectfully submitted.

WILLIAM R. ANDREWS,
Attorney for Protestants.

(Thereupon, at 12 o'clock m., the committee adjourned until 10.30 o'clock, Saturday, April 1, 1916.)

COMMITTEE ON THE PUBLIC LANDS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, April 1, 1916.

The committee met at 10 o'clock a. m., Hon. Scott Ferris (chairman) presiding.

There were present before the committee Mr. Albert F. Potter, of the Forest Service, and Mr. Edward C. Finney, of the Interior Department.

The CHAIRMAN. The committee will be in order, gentlemen.

Mr. Potter, if you will present your views on the pending bill now, we will hear you.

STATEMENT OF MR. ALBERT F. POTTER, ASSOCIATE FORESTER, DEPARTMENT OF AGRICULTURE.

Mr. POTTER. Mr. Chairman, section 2 of the bill deals with the exchanges under agreements that have been made heretofore between the different States and the Department of Agriculture, and also authorizes the department to enter into similar agreements for exchanges with other States in the future.

The first agreement of this kind which was entered into was with the State of South Dakota. The agreement was dated January 4, 1910, and will be found on page 30, part 1, of the hearings. The State of South Dakota desired to relinquish and convey to the Government its unsurveyed school sections in the Black Hills Forest Reserve and select in lieu thereof a solid body of timberland located on the exterior boundary of the forest equal in area and approximately equal in value, which might be acquired in place of the scattered school sections.

It happens that in this forest reserve all except four sections, I believe—that is, four 16's and 36's—were unsurveyed at the time of

the creation of the forest, so that an exchange of the unsurveyed sections practically cleaned up the school lands in the Black Hills Forest. I have prepared a diagram showing, in red, the location of the 16's and the 36's which the State desired to use as base, and on the southern half of the forest which is now the Harney Forest, showing, in blue, the area which the State desired to secure in lieu of this unsurveyed school land.

The agreement contemplated an examination of the lands and the compensation to the State for the lands which had been lost by settlement prior to the survey, and all lands which had been classfied as mineral; in fact, the entire area of the unsurveyed school sections, regardless of what may have happened to them after their inclusion within the forest reserve, which was entirely agreeable to the department. The area of these lands was found to be 60,143 acres, a good many of the sections having been surveyed after the creation of the forests, but prior to the consummation of this agreement.

It was found that the area which the State desired to select, as Mr. Johnson said yesterday, had a considerable number of private claims within it. Those are indicated in red on the diagrams I have here. So that it became necessary for the State to select another area in order to make up the amount of lands to which it was entitled, the area within this tract being only about 48,000 acres.

The State had made selection of a large amount of land in the vicinity of Sioux National Forest, in the northern part of the State, under its quantitative grant rights, and it desired to secure a body of land in one of the divisions of the Sioux Forest which would round up an area where they had selected all of the adjoining lands under these grants. That was entirely agreeable to the Forest Service, so we allowed them to make a selection of all that there was left of one of the divisions of the Sioux Forest, which contained an area of about 12,000 acres. That balanced up, as near as it was possible, the amount the State was entitled to, the net area of these two tracts being 60,149 acres, a difference of only 6 acres.

In order to carry out the agreement, a proclamation was issued by the President under date of February 14, 1912. I have a copy of the proclamation. It is not very long and I think it might be well for me to read it so that the committee will understand exactly its terms.

NATIONAL FORESTS IN THE STATE OF SOUTH DAKOTA.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas, by Proclamation, effective July 1, 1911, the President of the United States added certain lands to the Black Hills National Forest in South Dakota, and changed its boundaries by setting aside portions thereof to constitute the Harney National Forest; and

Whereas, In order to provide for a proper adjustment of the State's claims to lands within said National Forest in satisfaction of its common school grant a memorandum of agreement was entered into under date of January 4, 1910, between the Forester, United States Department of Agriculture, and the State of South Dakota, whereby it was agreed that the said State should relinquish all its title or claim under its grant in aid of common schools, to lands included within the Black Hills National Forest, prior to survey, being the whole or parts of sections 16 and 36 in each township, and be allowed to select other lands equivalent in acreage and value lying along and within the boundaries of said National Forest, and it was further agreed that a Board should be constituted to be composed of one representative appointed by the State of South Dakota, one by the Forester, and the third to be selected by the other two, which Board should make an examination, upon the ground, of the lands to be sur-

rendered, the location of which had or might be fixed either by the lines of the public surveys, as extended over said forest, or by protraction; and also the land to be selected in lieu thereof; and

Whereas, the Board constituted under such agreement has completed its examination and designated areas of lands within the Harney and Sioux National Forests, in the State of South Dakota, equivalent in acreage and value to sections 16 and 36 included in the said Black Hills National Forest prior to survey, determined as aforesaid, and the said report has been approved by the Secretary of Agriculture; and

Whereas, It appears that the public interest would be promoted by modifying the proclamation effective July 1, 1911, by which the boundaries of the Black Hills National Forest were changed and the Harney National Forest created, and also the proclamation of June 30, 1911, by which the boundaries of the Sioux National Forest were changed, so as to allow the State of South Dakota, in furtherance of the aforesaid agreement, to make selection of the lands designated by the Board as aforesaid as indemnity in satisfaction of the aforesaid portions of its common school grant;

Now, therefore, I, WILLIAM HOWARD TAFT, President of the United States of America, by virtue of the power in me vested by the Act of Congress approved June fourth, eighteen hundred and ninety-seven, entitled "An Act Making Appropriations for Sundry Civil Expenses of the Government for the Fiscal Year Ending June 30, 1898, and for other purposes," do proclaim that the proclamations effective July 1, 1911, changing the boundaries of the Black Hills National Forest and creating the Harney National Forest, and also the proclamation of June 30, 1911, changing the boundaries of the Sioux National Forest in South Dakota, are hereby modified so as to admit of immediate selection of lands within the boundaries of said forests, by the State of South Dakota as indemnity in partial satisfaction of its common school grant and in furtherance of the before-mentioned agreement of January 4, 1910, and not otherwise: *Provided*, That all selections by the State of South Dakota hereunder must be filed within ninety days from the date of this proclamation, or within ninety days from the approval of the official plat of survey of any unsurveyed land embraced in said report of the Board named under said agreement, and the lands embraced in selections made by the State of South Dakota hereunder, to the extent that such selections receive the final approval of the Secretary of the Interior, be, and the same are, hereby, declared eliminated from the said Harney and Sioux National Forests, such eliminations to become effective from the date of such approvals.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fifteenth day of February, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

[SEAL.] WM. H. TAFT.

By the President:

HUNTINGTON WILSON,
Acting Secretary of State.

[No. 1181.]

Now under this proclamation the State went ahead and filed its list for the selection of these lands, and the list for that portion within the Sioux National Forest, which it was found, when the lists were actually made up, netted something over 11,000 acres, was approved on May 2, 1913.

Mr. TAYLOR. Approved by whom?

Mr. POTTER. By the Secretary of the Interior. And that part of the lands has become the property of the State. But shortly after that the question arose as to the legal authority to make such exchanges, and action on the approval of the remainder of the area—or the 48,000 acres selected in the Harney National Forest—was suspended and still remains suspended, as the committee has been informed.

The State, by an act in 1913, which is chapter 224 of the Statutes of South Dakota, created a game preserve of these lands in the Harney National Forest, and, as Mr. Johnson told you, has inclosed it with a barbed-wire fence and has commenced to stock it with elk and buffalo.

The Forest Service has exercised no jurisdiction over this land since the completion of the agreement. It is in charge of the State, under its jurisdiction, but the State has not yet received a title to it.

Mr. TAYLOR. Why doesn't the Government give them their title? Is it being held up on account of the California decision?

Mr. POTTER. In response to an inquiry with reference to that, in a letter dated September 9, 1914, from Acting Commissioner Bruce, of the Land Office, he said:

> In this connection I have to advise you that questions have arisen in the department as to the proper construction of sections 2275 and 2276, U. S. Revised Statutes, as amended by the act of February 28, 1891 (26 Stat., 796). These questions, which relate in the main to the authority generally to make exchanges of this sort, as in accordance with and under the provisions of the said act of 1891, are before the department; and while this matter has been under consideration, no school-land selections involving exchanges based solely upon the provisions of said act, or those made in the furtherance of exchange agreements of the nature under consideration given in this letter, have received departmental approval, whether the school sections were surveyed or unsurveyed.

That indicates that the department has suspended action upon all of these propositions, in view of the difference of opinion that existed regarding the proper interpretation of the act of 1891.

Mr. TIMBERLAKE. Although those questions did not arise with regard to any of the sections where selections were made by a great many of the States, did they?

Mr. POTTER. No; the question arose in the court decision in the case of Hibbard *v.* Slack, in California, and the case of the State *v.* Whitney, in Washington. So that action in carrying out this agreement has been suspended, and remains so, awaiting general legislation by Congress as proposed in this bill, which will straighten out all these difficulties.

The value of the property involved in the South Dakota exchange, in accordance with the estimates made in the examination, is $1,121,000.

Mr. TAYLOR. How does the value compare with the tracts exchanged?

Mr. POTTER. The valuations are approximately equal. That is, the value of the lands which the Government will acquire and the value of the lands given to the State are approximately equal.

The CHAIRMAN. You try to reach that end in all of these exchanges, do you not, Mr. Potter?

Mr. POTTER. Oh, yes. Now, following the completion of the exchange with South Dakota, so far as the department is concerned, the State of Idaho came in and requested us to enter into a similar agreement in reference to the unsurveyed school lands in the national forest in that State. There had been considerable controversy over some selections which the State desired to make upon lands that had been included within a forest reserve after the State had made application for the survey, but just prior to the approval of the survey by the surveyor general, so that, in fact, their status was that of unsurveyed lands at the time they were included within the forest reserve, although they had been surveyed at the request of the State, and the State had a 60-day preference right of selection. There was considerable of a legal battle over that question, and it finally resulted in a hearing before the President, at which Gov. Hawley and Mr. McDougal, then attorney general of the State;

Senator Borah; Secretary Fisher; and Mr. Clements, of the Interior Department; and Mr. McCabe and myself, of the Agricultural Department, were present. All of the facts in the case were presented to the President, and his conclusion in the matter was that, while the State of Idaho might not, under a technical construction of the law, be entitled to these lands, he thought they were equitably entitled to them and that he would be very glad to have us undertake to get together with the State under some plan which would give them these lands.

At the request of the President I went out to Boise, Idaho, the capital of the State, and met with the State land board. We went over all of the details of the proposition and finally reached an agreement to the effect that if the State would withdraw the list that it had filed in reference to one township and make selections of the area desired in five other townships that were involved—there being six townships involved altogether—and would in that way take practically all of the good lands in these five townships, so that when they were eliminated the State would practically own it as a State forest, and that they would by resolution agree to hold this land as a State forest, that we would be willing to make the exchange with them. That was agreed to by the State. It seemed fair to everybody. It gave them the value that they wanted, and in the locality where they wanted it, and also enabled the Forest Service to eliminate five townships in a way that would not complicate the administration of the forest. A proclamation was issued by the President to carry out that agreement, as follows:

ST. JOE NATIONAL FOREST, IDAHO.

[Second proclamation.]

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas by Proclamation, effective July first, nineteen hundred and eleven, certain portions of the Coeur d'Alene National Forest, together with a part of the Clearwater National Forest, were combined to form the St. Joe National Forest in the State of Idaho; and

Whereas the State of Idaho made application under the Act of August eighteenth, eighteen hundred and ninety-four (28 Stat., 394), for indemnity selections in T. 41 N., R. 4 E.; T. 41 N., R. 5 E.; T. 42 N., R. 3 E.; T. 42 N., R. 4 E.; T. 42 N., R. 5 E.; and T. 44 N., R. 4 E.; and

Whereas the said indemnity selections were not approved because the said townships were included within the said Clearwater and the Coeur d'Alene National Forests prior to the filing of the State lists; and

Whereas it has been agreed between the State Land Board of the State of Idaho and the United States Department of Agriculture that in consideration of the elimination of T. 41 N., R. 4 E.; T. 41 N., R. 5 E.; T. 42 N., R. 3 E.; T. 42 N., R. 4 E.; and sections 6 to 8, inclusive, 16 to 22, inclusive, 26 to 36, inclusive, of T. 42 N., R. 5 E., in order to permit the said selection by the State to be confirmed and complete title to the selected areas to pass to the State, the said State Land Board agrees to withhold application for the selection of lands in T. 44 N., R. 4 E., and in lieu thereof to make application for other selections to the amount of nine thousand eight hundred and forty (9,840) acres located within the above-described sections and townships agreed upon for elimination from the said National Forest, including all of the public lands in T. 41 N., R. 4 E.; T. 41 N., R. 5 E., and the above-mentioned sections in T. 42 N., R. 5 E.; it being further agreed that it is the intent and will be the policy of the State Land Board to hold the lands selected, as above described, in ownership of the State and to manage the same in a manner that will insure their permanent value for forestry purposes and preserve favorable conditions of stream flow, by protecting the lands from fire and other destructive agencies, and by selling the timber only under such rules and regulations as will insure reproduction of the forest.

Now, therefore, I, William H. Taft, President of the United States of America, by virtue of the power in me vested by the Act of Congress approved June fourth, eighteen hundred and ninety-seven (30 Stat., 11 at 34 and 36), entitled "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the said above-mentioned Proclamation, effective July first, nineteen hundred and eleven, is hereby modified so as to admit of immediate selection, as above set forth, from the said above-described areas agreed upon for elimination, by the State of Idaho, as indemnity in partial satisfaction of its common school grant; Provided, that all such selections by the State of Idaho must be filed within ninety days from the date of this proclamation; and Provided also, that the lands embraced in said selections shall, upon the approval of said selections by the Secretary of the Interior, be, and the same are, hereby, declared eliminated from the St. Joe National Forest, such eliminations to become effective from the date of such approval.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this fourth day of June, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States the one hundred and thirty-sixth.

[SEAL.] WM. H. TAFT.

By the President:

P. C. KNOX,
Secretary of State.

[No. 1198.]

When we had concluded the negotiations with reference to these lands, the State land board took up with me the question of an agreement for the exchange of all their school lands in the national forests, and I told them the terms under which we would be willing to enter into such an agreement, which was practically along the same lines as the agreement which had been entered into with South Dakota. They said that they would like to include the surveyed lands as well as the unsurveyed lands. I told them that we would have no objection to that, if it could legally be done. When I returned to Washington, I took the matter up with the solicitor of the department, and was advised by him that, in view of the difference which existed between the position of the Court of California in the case of Hibbard *v.* Slack and the rulings of the Department of the Interior, that he felt it would be inadvisable for us at that time to include the surveyed lands in the agreement; the difference being that the Department of the Interior held that the surveyed lands might be used as the base for lieu selections and the court decisions held otherwise. So the agreement with the State of Idaho was drawn up only in reference to unsurveyed lands. We went ahead and made the examination of the lands and found that there was a total of 548,000 acres of unsurveyed school sections in the national forests; but only about half of them were timbered, the other half being nontimbered lands. The State was very desirous of securing a large area of grazing lands over in the eastern part of the State and raised the question of whether or not it might not use its nontimbered lands in the national forests as base for an exchange for these grazing lands in the eastern part of the State. We had no objection to that, of course, because that meant we would only have to eliminate an area of about 275,000 acres from the national forest instead of an acreage of 548,000 acers. So the matter was taken up with the Interior Department and no objection was offered there; and an order of withdrawal was issued on April 15, 1913, by President Wilson, withdrawing these grazing lands which the State desired to select from other disposition, in order that they

might carry out that part of the agreement in the way that they desired.

In reference to the other lands, it had been found that there was an area of 193,000 acres of good white-pine timberlands in the eastern half of the Kaniksu National Forest which the State desired to secure as a State forest. We were entirely agreeable to that, because it would give them a good practical unit; one that can be administered in a practical way, and administered economically. The timber values, however, on this 193,000 acres, were in excess of the timber values on the 275,000 acres of timbered school sections. It was found that the value of the timber on the 193,000 acres was $1,242,971. The value of the timber on the school sections was $1,033,196, so that it became necessary, in order to balance that up, for the State to release some selections it had made in the Boise National Forest, which contained timber of the value of about $200,000—which was agreeable to the State—and that gave us a valuation of $1,242,000 on the exchange area as against the value of the State timber, including the Boise timber, of $1,233,000, which came within $9,000 of being equal to the value we were giving them; and I thought that was near enough, inasmuch as we were dealing with a State. So that, so far as the Department of Agriculture is concerned, the exchange was closed along that line.

The area given to the State contains white-pine timber which we estimated to have a value of $4 a thousand feet, board measure. Sales have been made in the vicinity on national forest lands for as high as $5 a thousand. The State has applications for the purchase of this timber from mills that are operating in the close vicinity, and could make sales while the mills are operating; but of course they are tied up and can not do anything until the selections are approved. And the approval and passing of title for these lands is held up just the same as South Dakota until we may get the legal questions straightened out.

Following the negotiations with Idaho, the State of Montana indicated a desire to enter into a similar agreement, and on December 23, 1912, an agreement was entered into with the State of Montana—let me go back just a moment. The agreement of the State of Idaho does not appear in the pamphlet, part 1, of the hearing, and if you desire I will insert a copy of the Idaho agreement at this point.

The CHAIRMAN. I hope you will do that.

Memorandum of agreement made and entered into this 4th day of October, 1911, between the Department of Agriculture of the United States, through James Wilson, the Secretary of Agriculture, and the State of Idaho, through James H. Hawley, its governor, looking toward a settlement and adjustment of all matters of difference relative to the unsurveyed school lands within the national forests in the State of Idaho.

It is agreed between the foregoing parties that the following proposition shall be the basis of settlement, the details to be worked out as soon as practicable.

That as to all unsurveyed school sections included within the national forests in the State of Idaho, excepting those lost to the State by homestead settlement or which have already been relinquished to the United States as a basis for the selection of lieu lands, it is agreed that the State shall relinquish her claims and select as lieu lands other lands equivalent in acreage and values, lying along and within the present boundaries of the national forests in such position that when eliminated therefrom all will lie outside the new exterior boundaries of the national forests.

In order to carry out the proposition above expressed, it is further agreed that a representative appointed by the State land board of Idaho and a representative appointed by the Secretary of Agriculture at the earliest possible date shall make,

with such assistance as may be necessary, an examination upon the ground of the lands comprising the unsurveyed school sections to be relinquished and the lands to be selected in lieu thereof, and shall report their conclusion to the State land board and the Secretary of Agriculture for final approval.

In making lieu selections as above provided, it is understood that the State will select this equivalent area in several large tracts, some of which will be principally valuable for their timber and others for their forage, but that the State may have the right to select smaller tracts of not less than one section in any case.

It is further understood that after the representatives above mentioned have agreed upon the selections of lieu lands within the present boundaries of the national forests and along the boundaries thereof, as nearly as may be equivalent in value to the sections 16 and 36 surrendered, that the Secretary of Agriculture will recommend an Executive order eliminating the lands so selected from the national forests, so that new boundaries thereto may be created and that the lands so selected by the State be entirely without the national forests and be subject to the exclusive direction and control of the State, provided that the law at that time is such that the lands surrendered by the State will become a part of the national forest.

It is further understood that the salary and expenses of the representatives above referred to appointed by the State land board shall be paid by the State of Idaho, and the salary and expenses of the representative appointed by the Secretary of Agriculture shall be paid by the United States Department of Agriculture.

The undersigned agree to the above propositions and agree to carry them out as far as they have official power and authority to do so.

[SEAL.] JAMES WILSON,
Secretary of Agriculture.

[SEAL.] JAMES H. HAWLEY,
Governor of Idaho.

NATIONAL FORESTS IN THE STATE OF IDAHO.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA—A PROCLAMATION.

Whereas, By Proclamations, the President of the United States has, at various times, created certain National Forests, within the State of Idaho; and

Whereas, In order to provide for a proper adjustment of the claims of the State to to lands within said National Forests, in satisfaction of its common school grant, a memorandum of agreement was entered into under date of October 4, 1911, between the Secretary of the Department of Agriculture, and the Governor of the State of Idaho, whereby it was agreed that the said State should relinquish all its title or claim under its grant in aid of common schools, to lands included within the said National Forests, prior to survey, being the whole or parts of sections 16 and 36, in each township, and be allowed to select other lands equivalent in acreage and value lying along and within the boundaries of said National Forests, in such position that, when eliminated therefrom, all of said selected lands will lie outside the new exterior boundaries of the National Forests; and

Whereas, A memorandum of agreement was entered into, under date of December 10, 1912, between the Forester, the Associate Forester, the Governor of Idaho, and the State Land Commissioner of Idaho, whereby it was agreed, as a part of the said agreement of October 4, 1911, that the State will accept approximately 275,000 acres of public lands located in Bannock, Bingham, and Booneville Counties and adjacent to and adjoining the Caribou National Forest; and

Whereas, It appears that the public interests would be promoted by modifying the proclamations of the Kaniksu, Payette and Pend Oreille National Forests, so as to allow the State of Idaho, in furtherance of the aforesaid agreements, to make selections of the lands agreed upon for selection, and hereinafter described, as indemnity in satisfaction of the aforesaid portions of its common school grant;

Now, therefore, I, William H. Taft, President of the United States of America, by virtue of the power in me vested by the Act of Congress approved June fourth, eighteen hundred and ninety-seven, entitled "An Act Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-eight, and for other purposes," do proclaim that the said proclamations of the Kaniksu, Payette and Pend Oreille National Forests, are hereby modified so as to admit of immediate selection, by the State of Idaho, as indemnity in partial satisfaction of its common school grant and in furtherance of the before-mentioned agreements of October 4, 1911, and December 10, 1912, and not otherwise, of the follow-

ing described lands within the said Kaniksu, Payette and Pend Oreille National Forests, to wit:

Provided, that all selections by the State of Idaho hereunder must be filed within ninety days from the date of this proclamation, or within ninety days from the approval of the official plat of survey of any unsurveyed land embraced within the areas to be selected by the State, and the lands embraced in selections made by the State of Idaho hereunder, to the extent that such selections receive the final approval of the Secretary of the Interior, be, and the same are, hereby, declared eliminated from the Kaniksu, Payette and Pend Oreille National Forests, such eliminations to become effective from the date of such approvals.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this third day of March, in the year of our Lord one thousand nine hundred and thirteen, and of the Independence of the United States the one hundred and thirty-seventh.

[SEAL.] WM. H. TAFT.

By the President:

P. C. KNOX
Secretary of State.

[No. 1235.]

Mr. POTTER. The agreement with the State of Montana you will find on page 28 of part 1 of the hearings, and it was along exactly the same lines as the agreement with the State of Idaho. In this case the question having been raised as to legal authority for making such exchanges, the matter was presented to Congress in the form of an appropriation to cover the expense of the survey, and that was approved by Congress in the act of March 4, 1913 (the appropriation for the Department of Agriculture), in which $25,000 was appropriated to cover the cost of the survey, and the provision attached that the exchange should be made on the basis of approximately equal acreage and equal value.

Proceeding under that authority of Congress the lands were examined, and in Montana it developed that the State desired to do exactly the same thing which Idaho had done; that is, it desired to use a part of its base in the national forest for the selection of areas in the eastern part of the State and only wished to use the timbered portion of the lands as a basis of exchange for national-forest lands. The acreage of timberlands was found to be 121,000 acres, and two areas have been agreed upon which are satisfactory to the State, one located in the Blackfeet National Forest and one located in the Flathead National Forest. These areas contain approximately the same amount of timber and are of approximately the same value. The values, as estimated in this case, are $1,127,000 on the school sections and $1,089,000 on the forest sections, leaving a balance of $38,000 in favor of the Government, which the State was perfectly willing to waive and call it an even trade—figuring that the difference is not enough to warrant an attempt to get an area in some other place—that is, the values are near enough and the State is perfectly well satisfied and willing to accept it as an approximately equal exchange. That is as far as we have been able to go. The passing of title to the lands is being held up awaiting action by Congress on this bill.

More recently—or the year after—the State of Washington took up the question of an exchange, and an agreement was entered into between the officials of the State of Washington and Secretary Houston on December 22, 1914, for an exchange of the unsurveyed school lands in the national forests in the State of Washington, of

which there are approximately 500,000 acres. An appropriation was made by Congress in the bill approved March 4, 1915, of $50,000 to cover the Government's share of the expense. In all of these cases the State has paid half of the expense. Tne expense of examination of the lands has been borne equally, half by the State and half by the Government.

Mr. TIMBERLAKE. That was in this memorandum of agreement?

Mr. POTTER. Yes, sir; that is a provision in all of the agreements, and it is required that the money shall be made available by the State before the examination begins. That has been done in all the different cases. The only difference in the agreement with the State of Washington was in reference to the lands which had been lost on account of homestead settlement upon the lands prior to survey; that acreage having been deducted in the cases of Montana and Idaho. But in the State of Washington the attorney general took the position that the grant was a grant in presenti, and that the State was entitled to the full 640 acres in each case, regardless of whether there had been any settlement on it or not.

The CHAIRMAN. I was going to inquire, as a matter of fact, is the grant in the State of Oregon different than that in the other States—I mean Washington?

Mr. POTTER. There is a difference in the grants.

The CHAIRMAN. In the terms?

Mr. POTTER. There is a difference in the wording. In some of the grants the words are that these lands are "hereby granted" to the State; and in the others the wording is that these lands "shall be" granted to the State. There is that difference. Isn't that the difference, Mr. Finney?

Mr. FINNEY. That is one difference.

Mr. POTTER. That is the main difference.

Mr. LENROOT. Washington, Montana. and South Dakota are identical. They were admitted at the same time.

Mr. POTTER. But there is a difference in the language.

The CHAIRMAN. What is this trouble with Washington? They seem to be displeased.

Mr. POTTER. Washington takes the position that it is a grant in presenti, and that its rights attached at the time of the admission of the State, and that the unsurveyed school lands within the national forests are their property, regardless of the fact that they have not yet been identified by survey.

Mr. LENROOT. Are you familiar with the recent decision of the Supreme Court in the Morrison case?

Mr. POTTER. Yes, sir; it touches on that point and holds that the lands were not the property of the State until they had been identified by survey.

The CHAIRMAN. Does it hold—does that case come from Washington?

Mr. POTTER. No, sir; that case comes from Oregon.

The CHAIRMAN. Is the granting act the same in both cases?

Mr. LENROOT. No; but they discussed the whole question in the Morrison case. In the Oregon case it was a grant in futuri.

Mr. POTTER. There is a difference in the language of the enabling acts.

The CHAIRMAN. Then does that case settle one way or the other the Washington contention here?

Mr. LENROOT. It does, except that it is older than in the Morrison case. That is about the extent of it. But really it is an expression of the Supreme Court upon the question.

Mr. FINNEY. It is confirmatory of the rulings of the Interior Department in that respect.

The CHAIRMAN. Now, as a matter of fact, Washington is about the only State that you have not been able to get an agreement with—to get this bill so that it will correct the forests and fix the difference up, is it not?

Mr. LA FOLLETTE. If you will allow me, I will say that there is not any trouble with the settlement in the Forest Service at all, but it is because, as our attorney general said here, we hold that the grant was a grant in presenti, and the land outside of the forest reserve—there was a large quantity of the 16 and 36 sections that had settlements on them prior to survey, and before it was surveyed, and the selections could be made, about all the remaining land that was any account was put into forest reservations, and consequently we have nothing left to take the place of that; and that is the reason that our attorney general did not like to be tied up by an agreement making us accept section 1 of this act in order to get the benefit of section 2. There is no trouble between the State of Washington and the Agriculture Department and its settlement in respect to section 2; but the State of Washington does not like to have to accept section 1 in order to get the benefit of section 2. That was the difference.

Mr. POTTER. The only difference it will make will be that in the Washington exchange we will give the State a full 640 acres for each of its unsurveyed school land sections, and we will allow any settlers that happen to be on the lands to acquire those lands under the act of June 11, 1906, if they are agricultural lands. But that would not make any particular difference, because we will do that anyway in the other States we have made exchanges with, when any portion of the unsurveyed lands are afterwards found to be agricultural in character.

The examination of the lands in Washington exchange is just about half completed. There have been examined during the past season some 233,000 acres out of the 500,000 acres. We expect to finish the examination this year; and in the event of the passage of this bill there would then be no difficulty whatever in the carrying out the Washington agreement as contemplated, provided that Washington is willing to accept the terms of section 4 of the bill; or if, on the other hand, the committee feels that it should be modified. Under the terms of the bill as it stands, the State of Washington is required to accept the department's construction of the act of 1891, in order to get the benefit of the exchange. It ties section 1 and section 2 together, so that the States either have to accept both of them or neither one. That is right, is it not, Mr. Finney?

Mr. FINNEY. Yes.

The CHAIRMAN. Is that going to work a hardship on the State of Washington?

Mr. POTTER. I would hardly feel competent to express an opinion upon that point, Mr. Chairman, because it is mainly a legal proposition.

Mr. LA FOLLETTE. We claim it would be, in view of the fact that before the survey was made the majority of the lands left in the States that could be taken in lieu were put into the forest reserve, and consequently if we accept the law of 1891, which makes us agree that we had no rights as a grant in presenti, then we have nothing left to select from unless Congress would allow us to select land from the forest reserve.

The CHAIRMAN. Haven't you yet millions of acres of unentered land in Washington?

Mr. LA FOLLETTE. Untaken lands?

The CHAIRMAN. Yes.

Mr. LA FOLLETTE. We haven't anything left in the State of Washington except the forest reserve that is any account.

The CHAIRMAN. What is the total acreage of unentered land in the State of Washington?

Mr. FINNEY. About 1,400,000 acres, outside of the reserves.

Mr. LA FOLLETTE. But out of 69,000 square miles of territory you can easily see that that amount of acres would be inaccessible, rough, and no-account areas; and that is practically the situation there.

Mr. SINNOTT. You prefer to keep what you contend is yours?

Mr. LA FOLLETTE. Well, we do not want this act to settle our rights. If the Supreme Court should hold that the decision in the Morrison case would apply equally to the State of Washington, that would settle the matter. And if they should hold that we have no rights in presenti I suppose then we would either have to lose the 200,000 acres that we have got outside, or else take these rag-ends that are left, or get nothing for some 200,000 acres of land. We do not think that we should, by an act like this, be compelled to give up any rights which we claim, in order to make this exchange under section 2.

Mr. MAYS. Wouldn't you have to dispossess a lot of settlers?

Mr. LA FOLLETTE. We would have to dispossess a lot of settlers if they held our contention was not correct.

Mr. LENROOT. What they want is an option to take the benefits of the law of 1891 if it is to your interest, and not take it if it is not to your interest.

Mr. LA FOLLETTE. We do not want to take the act of 1891 at all, as far as this outside land is concerned, and we have no objection at all to make the exchanges of our school sections within forest reserve for an equal area and equal value. In other words, our contention is that these two propositions that are being tied together here absolutely have no bearing one on the other, as far as the State of Washington is concerned. The question that we come under in No. 1 has nothing whatever to do with No. 2, and it is put in there for the sole purpose of making Washington give up her contention as to the outside lands. That is all it covers, as Washington is the only State that has raised the question. They are the only State at issue, and this is simply to coerce Washington. We have got to give up the chance to settle 500,000 in order to contend for the right to, maybe, to acquire 200,000 acres that we claim we are entitled to.

Mr. POTTER. I contemplate, Mr, Chairman, that Mr. Finney will discuss the legal phases of the question and present the reasons for these recommendations from a legal standpoint. It was my purpose to present to the committee the facts in reference to all of these exchanges, so that the committee would know the problems involved

in section 2 of the bill; that is, what the exchange agreements are that have already been entered into. I contemplate that any agreements which may be entered into in the future with the State of Oregon or with the State of Utah, or any of the States that might desire to take advantage of section 2, would probably be along the same lines as the agreements that have been entered into with these other States.

A question has been raised by the State of California, in reference to which the Secretary has made a supplemental report to the Senate committee, and which was referred to by Gov. Eshelman when he was before the committee. It will be found on pages 74 and 75 of part 1 of the hearings. It is a question of whether or not the selections made by the State of California within areas which were withdrawn for forest purposes after the filing of the list shall be approved. Under the wording of the bill as it stands, they would not be approved because they would not be subject to selection at the time of the passage of this bill, on account of being in a national forest. The Forest Service has never yet made any objection to the approval of a list for the selection of surveyed land filed by a State prior to the forest withdrawal. We have taken the position that, regardless of the value of the lands, in all of those cases the State was entitled to it, and we would offer no objections. That has been the general attitude of the Forest Service, and a great many of these lists have been approved in years gone by, or up to within the past three years.

In this case, however, the Secretary of the Interior said that there were reasons why perhaps all of these selections should not be approved; that a part of them might involve water-power sites. Mr. Kingsbury had a conference with me about it, and I expressed the view that it was very hard to determine at this time just what might be involved in the selections, as it might be water-power uses or other public uses; and that I felt that if any restriction was going to be made, that there should be a discretionary authority given the secretary. It is difficult to say at this time just what might be involved. There is not only the water power, but Congress in the meantime has passed what we know as the Hetch Hetchy bill, providing for a municipal water supply for the city of San Francisco. I do not know that any of these lands involve the Hetch Hetchy project. I do not know just where they are located. The city of Los Angeles has constructed an aqueduct at a cost of $24,000,000 to furnish a water supply for that city. The water supply is mainly from the national forests. They have been very much concerned about locations upon these streams which might embarrass the city in the use of the water that it contemplates conveying through this aqueduct. Only this morning I initialed a favorable report on a bill introduced by Senator Phelan, providing for a right of way for a municipal water supply for the city of San Diego. So that my feeling in the matter—and after Mr. Kingsbury and I had discussed the matter with him—Secretary Houston expressed the opinion that he felt there ought to be a discretionary authority, for the reason that it is impossible to foresee all of the public needs which may arise, and that, therefore, if there is going to be any restriction at all it ought to be a restriction along the lines suggested by the Secretary of Agriculture as presented on page 75, which would be an amendment on line 4, page 4, of the bill, as follows:

Together with selections otherwise valid, where subsequent to the filing of the lists the lands selected were withdrawn for national forest purposes and sold or otherwise encumbered by the State, when in the opinion of the Secretary of Agriculture this will not be prejudicial to the public interests.

It is our feeling that the State of California ought to have enough confidence in the department to be willing to accept that general language.

There are no other special problems involved that have been called to my attention, except the proviso in section 3, which requires that after the passage of this bill, exchanges for surveyed school sections shall be made only under the terms of section 2 of the bill, which would be by an exchange agreement with the Secretary of Agriculture, and by the selection of lands of equal acreage and equal value within the boundaries of the national forest.

Mr. RAKER. What is the purpose of the restrictive provision?

Mr. POTTER. One of the purposes, as I understand it, is that the area of national forests will not be enlarged, as they would be in the case of surveyed sections if the State released the 640 acres in the forest reserve and it became part of the forest and took 640 acres outside. That would increase the area of the forest 640 acres, and as in many of the States there are hundreds of thousands of acres involved, it would increase the area of the national forests in those States to the extent of the acreage of the surveyed lands.

The other proposition is the question raised by Mr. Finney, of equal values; whether it is fair to allow the State to surrender lands which it has acquired a title to and take other lands that are of greater value.

Mr. FINNEY. There is another thought there, too, Mr. Potter. Congress, in 1905, repealed what was known as the forest lieu selection act, as they found it did not work well. It got into the hands of a lot of scrip dealers who perpetrated frauds on both the States and the Government, and it was thought an unwise method of disposing of the public lands. Now, if this exchange of lands in place within national forests is not limited in some such way as this, it again will probably become a form of scrip and will be used like forest lieu scrip was, which is apparently objectionable, as I say, because Congress repealed the former lieu exchange act.

Mr. POTTER. The Forest Service is not offering any objection to that proviso. Our position has always been that the lands which were unsurveyed at the time of the creation of the national forests became national forest lands, but that the lands which were surveyed became the property of the State. There is no reason why we should offer any objection to a consolidation of those lands within the national forests if the State desired to make the exchange in that way.

Mr. RAKER. I can not quite get the difference between the question of speculation. I do not see, if a State wants to exchange its base lands for lands inside of a reserve or outside, where there would be any difference as to speculation.

Mr. POTTER. The difference is this, Mr. Raker, that where the exchange is made within the national forest it is required that the values must be approximately equal; but where the exchange is made for areas outside, if the State can find lands outside which is worth two or three or ten times as much as the lands inside, it has the right to take it, and it is not restricted to lands of equal value.

Mr. FINNEY. And there is the further difference, under your method so far the exchanges have been in block—that is, in substantial

quantities—and the deal has been solely between the State and the Federal Government. Now, if this was made something like the forest lieu script, the State then would give up a school section only when some one applied for a quarter section or 40 acres or a section somewhere outside. That is the way it would become something in the nature of script, Judge.

Mr. RAKER. Don't you lose the value of it if the State enters into an exchange by making them confined to the large body?

Mr. FINNEY. On the contrary, I think it would result to the advantage of the State, as it has resulted to the advantage of Idaho and other States that Mr. Potter has named.

Mr. POTTER. In each of the States the State seemed to feel it was a decided advantage to secure these solid blocks of forest lands.

Mr. MAYS. Mr. Potter, has the State of Utah evidenced any desire to enter into this agreement?

Mr. POTTER. They have made inquiries regarding the terms of the agreement, but they have not as yet indicated a desire to enter into such an agreement. I think the land board has given the matter consideration as to whether or not it might not be advantageous to the State to have some such exchange.

Mr. LA FOLLETTE. Mr. Potter, can you state what the area of forest reserve is in the State of Washington? I did know, but I do not just remember now what it is.

Mr. POTTER. The net area on January 1, 1916, was 9,953,166 acres in the State of Washington.

Mr. LA FOLLETTE. Now there is only, as I understand it, some 200,000 acres involved in the difference between the Interior Department and the State of Washington. Do you think it would work any great hardship on the Forestry Department if we should allow the State of Washington to, in addition to the lieu selections that they made by exchange with the Agriculture Department, also pick an area that would be agreeable to your department and the State of Washington by mutual agreement, to take the 200,000 acres in lieu from the agricultural or from the forest reserves, and thus settle this question once and for all between the State of Washington and the Government?

Mr. POTTER. The Forest Service has objected to that, on the ground that it would be taking from the national forest lands to recompense the State for a loss which the creation of the national forests was in no way responsible for.

Mr. LA FOLLETTE. Well, I will admit the officials of the Forest Department were in no way responsible for it, but the forest area being withdrawn in the State of Washington is surely responsible for our not being able to get lieu lands of equal value or anything like equal value to that settled on by settlers prior to survey. There is no question about that, and I do not think your department should question that.

Mr. POTTER. That is probably true to some extent.

Mr. LA FOLLETTE. I will admit that your officials had nothing to do with it, but the fact that 9,000,000 acres was set apart there, surely precludes the State of Washington from getting lands of equal value where all that is left in the State outside of the forest reserve, in 69,000 square miles, is just a little over a million acres.

Mr. POTTER. Of course if it should work out in the end that it is absolutely impossible for the State to satisfy its equities from the lands outside, then it would seem to me a reasonable proposition to consider giving the State lands that are under reservation; but right at this present time, we are not sure that it is the case.

Mr. LA FOLLETTE. Our officials seem to be sure of that, and I have heard some of the officials of the Interior Department express the same opinion.

Mr. POTTER. But that matter was presented by Mr. Savage and Mr. Tanner at the time of our negotiations on this agreement. They wanted us to include that in the exchange agreement, and the Secretary of Agriculture declined to do it for the reason that the creation of the national forests was in no way responsible for this loss, a large part of it is in Indian reservations, and he did not feel that he would be justified in entering into an agreement to make an elimnation from the national forests for that purpose at this time.

Mr. LA FOLLETTE. But you do not think that the Secretary would take the stand that the creation of the national forest would not preclude, under certain conditions, the States from getting indemnity?

Mr. POTTER. If there was no other land that it could select.

Mr. LA FOLLETTE. That is our contention, that there are no other lands of anything like equal value left in the State. There is nothing but the tag-ends left after the forest reserves area was made.

Mr. POTTER. I have nothing further to present, Mr. Chairman, unless there are some further questions.

The CHAIRMAN. Mr. Finney, are you ready to proceed now?

STATEMENT OF MR. EDWARD C. FINNEY, MEMBER OF THE BOARD OF APPEALS, DEPARTMENT OF INTERIOR.

Mr. FINNEY. Mr. Chairman, in order to make a fairly lucid statement I will have to briefly cover some ground already touched upon by others who have appeared before the committee.

As you know, all of the Western States except the State of Nevada were given grants of school sections in place, some of them sections 16 and 36; others, where the land values were supposed to be inferior, were given as many as four sections in place in each township. Some of the granting acts made provision for indemnity to the states where, prior to the grant, the lands in place had been lost by reason of settlement or prior existing reservations. The grant did not, however, provide in all instance for compensation for losses which might later occur, where reservations were subsequently created. So that on February 28, 1891, Congress passed a general act providing for indemnity. The first part of the act dealt with cases where homestead or preemption settlers went upon unsurveyed lands, not knowing whether they were school land or not, and happened to settle upon school sections. It provided that in those cases where the settlements were made prior to the survey in the field, that the State might take equal areas elsewhere in lieu of those losses.

It then went on to provide that other lands of equal acreage should be appropriated and granted by the United States and might be selected by the States where the sections in place are found to be

mineral or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States. Then follows a provision that the selection of lieu lands by the State should be a waiver of the lands in place. Then at the end of the section is a provision that the State—that nothing in the act should prevent the State from waiting, if it so desires, for the reservation to be extinguished, and still holding the lands in place. The Department of the Interior has almost uniformly held that this is a general act applicable to all of these States; and, as stated on page 49 of the record, has squarely held that it constituted a general scheme for the indemnification of the States against loss. It also held it was an act which permitted the exchanges of titles—that is, that it permitted the State to give up lands to which its title had vested because of surveys prior to the reservation and take other lands in lieu of them.

The departmental contention on the first matter, I think, was sustained, or ratified, by Congress in the case of the State of Utah. The granting act of the State of Utah did not specifically refer to the act of February 28, 1891, but in 1902 Congress passed an act expressly providing that the provisions of the act of February 28, 1891, should be applicable to the State of Utah. Furthermore, the Morrison case, just referred to, sustained the departmental contention in that regard. One of the leading opinions rendered by the department was that by Assistant Attorney General Van Devanter, reported in 28 Land Decisions, page 57. So that for many years the department went ahead administering this act and permitting these lieu selections to be made and consummating these exchanges of surveyed lands in place. That procedure was halted by reason of the decisions, discussed already at some length, in the cases of Hibbard *v.* Slack and the Desert Land & Irrigation Co. *v.* The State of California; and also by the decision in Idaho in the case of Balderson *v.* Brady. In the Balderson *v.* Brady case the Supreme Court held that the State officers did not have authority to surrender lands title to which had vested in the State in an exchange of that kind, because they said their constitution and laws permitted them only to sell State lands at a price not less than $10 an acre, and that did not afford any basis for an exchange. Subsequently the State of Idaho passed an act—the State Legislature of Idaho passed an act authorizing certain exchanges to be made, and that was taken into the court and held to be constitutional.

Now, with respect to the States of Washington, Montana, North and South Dakota——

Mr. LENROOT (interposing). May I ask you there, Mr. Finney, in the case of Idaho, where authority was expressly granted to make the exchanges, have the exchanges been made in those cases?

Mr. FINNEY. No; they have not, Mr. Lenroot, because the Secretary of the Interior says he is in doubt as to which decision of the court to follow.

Mr. LENROOT. That he is in doubt as to whether even that authority granted there is still the authority under the act of 1891 to make the exchange?

Mr. FINNEY. Yes. With respect to the States of Washington, Montana, North and South Dakota, the granting acts contain language somewhat different from that to the other States. It was a grant in presenti; or they used the language in the sections, "are hereby granted, whether surveyed or unsurveyed." That is the

language of the act and the State of Washington has contended that its title vested immediately upon the admission of the State, to all sections 16 and 36, whether they have been surveyed or not, and that the State could not be deprived of those lands either by settlers or by the United States. The three other States, so far as I know, are not making that contention, at least they have not carried the matter into the courts. They are making lieu selections, which are being received and filed.

Mr. SINNOTT. Before you get through, will you take up that letter presented here yesterday by Mr. Hawley, from the governor of Oregon?

Mr. FINNEY. Yes, sir; I will do that. The department, however, with respect to the State of Washington, having in view the first clause of the act of February 28, 1891, which specifically provides that where settlers go upon school sections prior to survey their claims shall be protected and the State given lieu lands; and having in mind the fact that Congress by the act of May 14, 1880, expressly made unsurveyed lands subject to settlement by homesteaders, the department has been uniformly holding that settlements made in the State of Washington upon unsurveyed sections 16 and 36 defeated the claim of the State, and we have in each case as it came up approved the homestead claim and issued a patent to the homesteader.

The CHAIRMAN. Mr. Finney, I do not like to interrupt you, but we will now have to answer the call of the House. Without objection the committee will stand recessed until 2 o'clock this afternoon.

AFTER RECESS.

The committee met at 2.15 p. m., pursuant to the taking of a recess, Hon. Scott Ferris (chairman) presiding.

The CHAIRMAN. You may proceed, Mr. Finney, whenever you are ready.

STATEMENT OF MR. E. C. FINNEY—Continued.

Mr. FINNEY. Mr. Lenroot asked me to state the amendment that was suggested by the department to section 1. That was to strike out on page 2 of the bill all of line 14, after the word "regular," and all of line 15, and insert in lieu thereof "and for lands which are nonmineral in character, and have not, prior to the date of approval, been withdrawn under the provisions of the act of June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes, eight hundred and forty-seven), may be approved under the provisions of said act of February twenty-eighth, eighteen hundred and ninety-one."

Then a somewhat similar amendment is suggested in line 2 on page 4 of section 3.

The CHAIRMAN. Is that the suggestion of the Interior Department?

Mr. FINNEY. Secretary Lane; yes.

I was speaking before the recess about the grant to the State of Washington and the attitude assumed by that State in connection with the decision of the Supreme court of Washington in the Whitney case. The decision of the Interior Department, and the statutes and authorities upon which they rely, are set out in a decision entitled "The State of Washington *v.* Geisler" (41 L. D., 621).

Mr. SINNOTT. Is that in this synopsis of decisions?

Mr. FINNEY. I think it is mentioned in there.

Mr. SINNOTT. Yes; it is here; page 25.

Mr. FINNEY. And whether the State of Washington is correct in its construction of the law or whether the Interior Department is correct, the fact is that their lands are tied up. We are disposing of the sixteenth and thirty-sixth sections on which settlements were made prior to the survey under the homestead laws, and we are declining to approve exchanges of lands within national forests, because their attitude is that the surveyed as well as the unsurveyed lands, according to their contention, vested, in the State, and if no exchange can be made under the act of 1891, neither the States nor the United States has the authority to consummate those exchanges.

Mr. LENROOT. Has the State of Washington availed itself of the provisions of the act of 1891 with reference to these unsurveyed lands at all?

Mr. FINNEY. They had availed themselves of it prior to the decision of the State supreme court, Mr. Lenroot, and made quite a good many selections. Since that decision, they have not.

Mr. LENROOT. Did they make selections of lieu lands that were approved by your department?

Mr. FINNEY. Yes.

Mr. SINNOTT. What, briefly, was the reason of that supreme court decision of that State?

Mr. LENROOT. It was between a purchaser and the State.

Mr. FINNEY. It was a suit brought by the State of Washington against a man named Whitney, involving one of those sections, and it was based on the contention, which you will find on page 24 of the hearings, that under their enabling act the lands passed as a grant in praesenti. So that the situation with respect not only to Washington but to practically all of the States is that the right to consummate these lieu selections, these exchanges, has been questioned by four or five different court decisions, and the attidue of Secretary Jones is that it would not be wise and proper for the Interior Department to go ahead and consummate exchanges when the right so to do is questioned by these courts, because it might result in the patenting by the United States of some of the public lands without receiving a legal base therefor. The thought of the department was that if legislation could be had by Congress it would make it clearer that it is the intent of the Congress of the United States that these grants should be adjusted, and these lieu selections might be made and exchanges consummated under the act of 1891. It could immediately proceed to adjust the matter with those States which now have the constitutional authority to carry out those exchanges. As to those States which haven't it, they should be required to procure the necessary constitutional amendments or further legislation in the State legislature, where constitutional amendments would not be necessary.

The CHAIRMAN. You heard Mr. Mondell's speech yesterday?

Mr. FINNEY. Yes.

The CHAIRMAN. He seemed to think the bill would not accomplish anything at all. What do you think of his statement?

Mr. FINNEY. He criticized the first part of the statement which declares the act of February 28, 1891, to be applicable to State grants. I took that language from the act of Congress passed in

1902, declaring the act applicable to the State of Utah. What Mr. Mondell wants is a legislative interpretation of the act of 1891. Of course it would be very flattering if Congress would confirm our judgment with respect to the scope and extent of that law and the effect of it, but I do not know that even the action of Congress would be binding in cases where there are any intervening adverse rights. However, it might be possible to amend the language of this first section to some extent so as to make it entirely clear that it is the thought of Congress that the act of 1891 is and was applicable to the school-land exchanges. I do not know that it would do any harm.

Mr. LENROOT. With reference to Utah, I see you do not include Utah in your specific amendment of the act of 1891. Is that because Utah has already been taken care of by a former act?

Mr. FINNEY. Yes, sir.

Mr. LENROOT. I notice there are a great many pending selections in the State of Utah. Now, if that act is sufficient why haven't those selections been approved?

Mr. FINNEY. I can not answer that question. It may be that they are based on surveyed school selections in national forests. The department does not contend that the mere making of the act of 1891 applicable would permit the exchange of surveyed school selections where the title vested in the States prior to the creation of the reservation.

Mr. LENROOT. Let me ask you whether any of these pending and unapproved selections comprise any, where the title did actually vest prior to the creation of the reservation, that would be covered by section 1?

Mr. FINNEY. Those are not covered by section 1; no. They are covered by section 3.

Mr. LENROOT. Now, I thought that California was interested in section 1, and I further understood that they were being taken care of if they wanted selections approved, because of land included within forest reservations after the grant to the State and after the survey.

Mr. FINNEY. That is true. I think I was mistaken, Mr. Lenroot. I think the intent of section 1 was to cover both classes of land.

Mr. LENROOT. Then I want to ask you this: Section 1 of the act of 1891 provides that where selections are made under the provisions of that act it shall be deemed a waiver of the State's claim to land in place. Assuming that that land has actually passed to the State, and the State avails itself of the benefits of the act of 1891 through selection only, but without a conveyance, what is the legal title to that land? Is that legal title transferred by operation of law the same as it would be a waiver of a claim?

Mr. FINNEY. My opinion is that when the transfer is consummated the legal title to the school section is transferred by operation of law; yes.

Mr. LENROOT. Without any relinquishment on the part of the State?

Mr. FINNEY. Without any relinquishment upon the part of the State, or conveyance on the part of the State other than that contained in their selection. These lieu selections are made in the shape of a list, one page of it showing a list of the school sections, the other page containing the lands which they desire to select in lieu,

and the list specifies that a certain section is lost by reason of the settlement, inclusion in the forest, or other reservations. No deed of conveyance from the State or former relinquishment has ever been required, so far as I know, but it has been held that the consummation of the exchange passes title to the section in place in the United States.

Mr. LENROOT. It is a rather novel theory of the law if there is no question about the title, and the title has actually passed, to take it back simply upon a provision of law that shall operate as a waiver.

Mr. FINNEY. Yes; I do not know of any other case exactly like it. Under the forest reserve lieu section act of 1897 an actual reconveyance of the title to the United States was required.

Mr. LENROOT. Can you tell us in a general way what the selections are that will be ratified under section 1?

Mr. FINNEY. I do not know that I quite understand what you are getting at.

Mr. LENROOT. As distinguished between section 1 and section 3, section 3 ratifies exchanges of title, and provides for relinquishment, etc., but section 1—what is the character of pending selections that would be covered by section 1, and not by section 3? I do not find that in the report.

Mr. FINNEY. Section 1 was drawn having particularly in mind the States of Washington, Montana, and the two Dakotas, but was drawn broad enough to cover all States which might have selections pending based upon unsurveyed school sections within national forests or other reservations.

Mr. LENROOT. Well, do you know whether pending selections cover only that character of land?

Mr. FINNEY. Oh, there are other selections based upon loss, due to settlements upon lands. There are a number of those, particularly in the State of Montana.

Mr. LENROOT. What I am getting at is are there any selections now pending that would be approved by section 1, where the title passed to the State, but a reservation was afterwards created?

Mr. FINNEY. Washington claims that the titles passed to unsurveyed sections at the date of the grant.

Mr. LENROOT. I understand that, but section 3 contemplates a change of title where the reservation was made after the grant was approved.

Mr. FINNEY. That is exchange of title where the Government admits that the title had vested in the State prior to the creation of the reservation.

Mr. LENROOT. The act of 1891 contemplates, does it not, at least under one construction, that even though title had passed to a State, and a forest reservation was afterwards created, that they might make other selections as indemnity?

Mr. FINNEY. That is the interpretation that has been placed upon it by the Interior Department for many years.

Mr. LENROOT. Now, then, as to the character of the lands where the title had actually passed, whether the pending selections cover that class of cases?

Mr. FINNEY. Oh, yes; there are a number of those selections pending.

Mr. LENROOT. Then section 3 covers only exchanges within forest reservations, or would it not be open to selection; is that it?

Mr. FINNEY. Section 3 covers cases where the school selections are in forests, permanent reservations. The lands that the States have selected are outside the forest reservation. There are three things, as I understand it: Number 1 covers selections made by the State in lieu of unsurveyed school sections which have been lost by inclusion in forest, or other, reservations, or by means of settlement.

Mr. RAKER. Section 1?

Mr. FINNEY. Section 1. Section 3 deals with those cases where the title of the State had vested in the school selections because the survey was completed before the land was put into reservation, and provides for an exchange. Section 2 deals with the consummation of certain agreements entered into between the Agricultural Department and several States, and provides for a similar method of adjusting losses and making selections within national forests in future.

Mr. LENROOT. That gets back to my original question, whether or not selections that would be ratified or authorized to be approved under section 1, will cover any lands where title did pass to the State after a forest reservation has been created. Are there any such pending selections?

Mr. SMITH. Does that section 1 apply where the land is taken under the land grants and something has occurred which suspended the consummation of the selection? For instance, you might go out and settle a piece of land, and then the forest reservation would come in, and if you had it before the survey was absolutely completed——

Mr. FINNEY (interposing). That has been selected. Your question is this, Mr. Lenroot, have we selections pending in the Interior Department the bases of which are surveyed school selections that were put in forest reservations after they were surveyed?

Mr. LENROOT. That is my question.

Mr. FINNEY. The answer is yes, a great many California selections are of that character.

Mr. LENROOT. Then how do you distinguish between ratifying the selections under the proposed section 1, and requiring a relinquishment and conveyance under section 3?

Mr. FINNEY. Section 3 does not provide for any reconveyance, does it?

Mr. LENROOT. Yes; it relates wholly to exchanges of title. That contemplates a release on the part of the State.

Mr. FINNEY (reading):

That exchanges of title between the United States and States heretofore made and approved under authority of said act of February twenty-eighth, eighteen hundred and ninety-one, whereby the State relinquished its title to surveyed school lands in forest or other permanent reservations in lieu of lands elsewhere are hereby ratified and confirmed, and all pending and unapproved exchanges of like character, if otherwise regular, for public lands subject to selection at date of approval may be in similar manner adjudicated and approved.

Mr. LENROOT. What I want to get at is whether section 1 and section 3 do not or may not cover the same character of lands, section 1 giving them, under one construction of the act of 1891, the right, although title had passed, to select indemnity lands, and by operation

of the act of waiver, vesting the title in the Government, while section 3 contemplates an exchange of title in the same character of lands.

Mr. FINNEY. I do not think that was the intent of the measure.

Mr. LENROOT. Do you get what I have in mind?

Mr. FINNEY. I begin to understand you now.

Mr. POTTER. It was the intention in section 3 to clear title on all exchanges which had been consummated and the lists approved on the basis of surveyed sections, and to authorize exchanges on the basis of surveyed sections to be made in the future, separating that from the other proposition, from the lists pending and approved that had been presented under the act of 1891. As a matter of fact, the same lists were based on surveyed lands and unsurveyed lands.

Mr. LENROOT. So that section 1 and section 3 cover, in fact, the same character of lands, at least in part?

Mr. FINNEY. Yes; they overlap to that extent.

Mr. LENROOT. Let me ask you further, has it been the construction of the department that the act of 1891, if applicable in general terms, was broad enough to treat lands that had title which had been vested in the State and a reservation afterwards made as a base for indemnity?

Mr. FINNEY. Yes; that is set out on page 49 as follows:

That the act of 1891 was not only an act providing for indemnification as against loss, but also authorized an "exchange" of title between the State and the United States where the granted sections fell within a national reservation.

Mr. LENROOT. That is what I am getting at. This does not involve section 1, any change of title whatsoever.

Mr. FINNEY. I think section 1 was intended to cover the indemnity proposition and section 3 the exchange proposition. Is that correct, Mr. Potter?

Mr. POTTER. Section 1 was not intended to cover any cases where title had passed.

Mr. FINNEY. I notice in section 1 the acts referred to are acts relating to the State of Washington, Montana, North and South Dakota, Idaho, and Montana, as it declares that the provision of the act of 1891 is applicable to those States, assuming that there is no question of its applicability to the other States and providing that the indemnity provisions of the act of 1891 shall be applicable in order that all selections made under that act shall be ratified and confirmed. Now, the third section appears to deal with California and the other States, dealing with exchanges of the surveyed lands, the right to make them having been questioned by the court in such cases as those of Hibberd *v.* Slack.

Mr. LENROOT. If the interpretation of your department prevails, then there is a legal base for indemnity, isn't there, under the act of 1891 and the Morrison case?

Mr. FINNEY. Yes.

Mr. LENROOT. If the construction of the Supreme Court of Washington should prevail, there is no legal base.

Mr. FINNEY. No legal base.

Mr. LENROOT. Well, now, under the construction of your department the act of 1891 was not only an act of indemnification against loss, but it also authorized an exchange of title between the State and

the United States. I want to ask whether any of these pending and unapproved selections are of the character that, under the construction of your department, would require exchange of title—in other words, a relinquishment.

Mr. FINNEY. That would constitute an exchange of title, but the department has never, so far as I know, required a State to execute a deed or a formal relinquishment. Am I not correct, Mr. Kingsbury?

Mr. KINGSBURY. Yes.

Mr. FINNEY. In other words, the matter has been accomplished by the ordinary listing, of the assigning of the forest reservation section which the State proposed to give up in lieu of the Government land.

Mr. LENROOT. Do I understand that under section 3 the words "exchanges of title" do not contemplate any act other than making selections? I had supposed there were to be deeds of relinquishment.

Mr. TIMBERLAKE. They never have been given in forest lieu selections. They always had to execute a deed, but in the regular loss of the base we never——

Mr. FINNEY (interposing). We always require the State in those circumstances to furnish an abstract of title or certificate of title showing that they have not sold, assigned, or incumbered the lands sought to be used as base, but we do not require any deed or formal instrument conveying the title to the United States.

Mr. LENROOT. You spoke of the situation that was raised in Idaho, as to the authority of the land commission. Did that arise merely through question of the authority of the land commissioners to make selection?

Mr. FINNEY. No; the authority to dispose of the base land according to the holding as I recall it. The law of Idaho required school lands, that is lands granted to the State in place, to be disposed of in a certain manner, namely, at sale at not less than $10 an acre. That was the only method under which the officers of the State could could dispose of those lands.

Mr. LENROOT. Now, what followed there to clear that up?

Mr. FINNEY. An act of the Legislature of the State of Idaho, which authorized the State land board to make such lieu selections or exchanges, and bringing into the Supreme Court of a case involving the legality or the constitutionality of that act of the legislature. You will find that stated on pages 36 and 37. The first case I mention is Balderston *v.* Brady, on page 36. The moving cause was the attempted relinquishment of the base land. This was a case where certain settlers had got on the land or something of that sort, and the State land board was willing to give up the lands and take lands somewhere else.

Mr. SINNOTT. Do you issue any patent to the State for its surveyed land?

Mr. FINNEY. No patent or any other evidence of title is issued to the States for the lands in place. The only evidence of title they have is the grant by Congress.

Mr. SINNOTT. Grant by Congress? Then when you take over the surveyed sections do you make any record title of it in the State?

Mr. FINNEY. Not on the county records of the State. We make a record of it on the books of the local land office, and upon the

record books of the General Land Office, and hold the land open for disposition under appropriate land laws, but we do not take any record of it in the county.

Mr. SINNOTT. You do not take any other steps to protect yourselves from a purchaser who might purchase from the State through connivance on the part of the State officials?

Mr. FINNEY. No; of course we assume that the State will act in good faith in making lieu selections, after furnishing evidence of title prior to that time.

Mr. LENROOT. This legislation in the State of Idaho that you refer to permits, first, the relinquishment of lands by the State board of land commissioners, and secondly, the selection of lieu lands. Now did this State land board in any formal way make a relinquishment or was it assumed from the selection of the lands?

Mr. FINNEY. It is assumed.

Mr. LENROOT. And giving the particular lands as a base?

Mr. FINNEY. Yes. I do not know that that practice has involved any States or the United States in any difficulty.

Mr. RAKER. What has been the practice with regard to California selections after they are approved? Does the Government issue a patent to the State for the land that has been selected by the State?

Mr. FINNEY. My understanding is that patents issue or, rather, certificates.

Mr. KINGSBURY. They prepare lists that are approved by the department, and that list is presumed to be a patent.

Mr. FINNEY. It is a certification to the State, as we call it.

Mr. RAKER. No separate patent is issued by the Government to the State for this particular tract of land?

Mr. FINNEY. The courts have held that that certificate is equivalent to a patent.

Mr. RAKER. If there is a patent issued for the land in the approved list, they return that approved list to the State land office.

Mr. FINNEY. That is the effect of it. We call it a certification.

Mr. RAKER. And it also gets to the local land office and it is marked on the plat?

Mr. FINNEY. Yes; that is true.

Mr. RAKER. That is my understanding. I wanted it fully before the committee.

Mr. SINNOTT. What is the first entry that an abstractor makes on his abstract with reference to such lands?

Mr. KINGSBURY. He doesn't make any record of the conveyance by the United States to the State unless he or someone else gets a copy of that list and records it in the county in which the land is located.

Mr. SINNOTT. He secures that from the State officials?

Mr. TIMBERLAKE. Or the local office.

Mr. RAKER. This list is always filed in the local land office and in turn is sent to the county assessors, isn't it?

Mr. KINGSBURY. Not unless some individual looks after it in his own interest.

Mr. RAKER. We have to look after it for the purpose of taxation. This approved list goes to the register of the local land office of that district, and in turn each county in that district gets a copy of that list for assessment purposes.

Mr. FINNEY. There is a law of Congress which permits the county authorities to get a record of all patents or approved lists from the register of the land office so that it may be noted on the county records.

Mr. LENROOT. If section 1 is accepted by the State, Mr. Finney, is it your construction that upon the acceptance of section 1 of the provisions of the act of 1891, if there is a loss of lands within these forest reservations, that it is optional with the State to get an indemnity for that loss or retain the lands?

Mr. FINNEY. It is optional with the State.

Mr. LENROOT. Then, how is Washington adversely affected by the acceptance of section 1?

Mr. FINNEY. I understand the position of the State to be that they are not objecting to the exchange of lands in the forests, but they do object to admitting that the State loses school selections by reason of settlements upon those selections prior to the survey. Now there is an actual loss within the meaning of the act of 1891 if a settler goes upon land; that is, the part they are interested in. As I said a moment ago, we are going ahead and recognizing homestead claims and issuing patents for them, but the State is not recognizing the validity of the patents.

Mr. LA FOLLETTE. But you admit that sections 1 and 2 are entirely separate, that one in no way affects the other.

Mr. FINNEY. I can't say that they are entirely separate, because the reason for the basis of exchange in section 1 and the right to make the exchange in section 2 both rest upon the act of 1891, unless Congress passes an entirely new law authorizing exchanges.

Mr. LA FOLLETTE. Here is what I really mean, referring to my own State, before we can get in under section 2 we have got to admit the contentions as to section 1, and relinquish the rights that we claim under the law of 1891. In other words, we have got to relinquish our claim of title in præsenti, the grant in præsenti.

Mr. SMITH. Why can't you take the lieu lands in place of those that are lost?

Mr. LA FOLLETTE. We have nothing left to take it out of. They put 13,000,000 acres into the forest reserve and we have only a million acres of ragged ends out of 69,000 square miles of territory, to take our lieu land, and the best land in the State is included in sections 36 and 16, and it is because we want lieu lands that we ask to be permitted to take 200,000 acres in controversy from some part of the forest reserve which has been set aside, and that was denied us. Now, my State is perfectly willing to accept this measure if they will strike out that provision in section 4 which says:

> That the provisions of sections one and two of this act shall be applicable only where the State shall have, by constitutional legislative enactment, signified its assent to the terms of said act of 1891.

That compels us to accept that before we can accept exchanges in the forest reserve, where there is no question now that the forest reservation belongs to the State, and the State of Washington has agreed to make the exchange, but the Interior Department wants to couple with that an entirely abstract matter.

Mr. FINNEY. I don't understand it that way, Mr. La Follette.

Mr. LA FOLLETTE. That is the way my attorney general looks at it.

Mr. FINNEY. I do not think it would do you any good if the law were passed omitting section 4. The basis of the objection of the Interior Department is that your court holds that it is a grant in praesenti; that you took your land in the State, whether surveyed or unsurveyed, and that you do not have to give it up and have not lost anything. Now, this section 2, which you think will benefit the State, is based on the act of 1891. It is a proposed amendment of the act of 1891 by adding another section; that is, where there has been loss or where you propose to make exchanges under the act of 1891, with both the base lands and the lands that you want to get here in the national forest. An agreement such as is contemplated in your State may be carried out, but it is all bottomed on the act of 1891, and if your State has not the constitutional or legal authority to make those exchanges, then some legislation is necessary, and the fact that you may have agreed upon lands that you want to give up would not affect the legal aspect.

Mr. LA FOLLETTE. If you do not put in the provision in section 4 that sections 1 and 2 of this act shall be applicable, etc., we would be allowed to make the exchange under section 2, for these lands are not in controversy at all between the State of Washington and the Interior Department.

Mr. FINNEY. I don't know that that would follow at all, because——

Mr. LA FOLLETTE (interposing). It would, and you strike out the words "sections one and two of this act shall be applicable only where the State shall have, by constitutional legislative enactment, signified its assent," that would still leave us the right to make our exchanges under section 2.

Mr. FINNEY. That is assuming that your State has the constitutional and legal authority to make the exchange.

Mr. SINNOTT. Mr. Finney, does this cut any figure? Section 2 of the constitution of the State of Washington requires that these lands shall be sold not otherwise than by public auction to the highest bidder. That has to be gotten out of the road before you can make this exchange.

Mr. FINNEY. Some of these decisions in other States have thrown doubt into the mind of the department, as to whether the State officials have the right to make these exchanges, and consequently the Federal Government does not care to give the public land up unless the State can give good title to the base which they offer.

Mr. LA FOLLETTE. Mr. Chairman, as I understand it the Interior Department turned over to you a letter from our governor in this case. I would like to have that brought in at this time.

The CHAIRMAN. The clerk will get it from the files.

Mr. LENROOT. Does the acceptance of the first section of the act of 1891, Mr. Finney, curtail the rights of States in any way except in the case of prior settlement by a homesteader, and that takes it out of the operation of the act?

Mr. FINNEY. I don't understand that it curtails the right in any way, and I think that is the objection of the State of Washington.

Mr. POTTER. From my conversation with Mr. Turner, I got the impression that his objection was that it would require him to concede rights of the settlers to the lands.

Mr. LENROOT. What does the State of Washington desire to do with reference to that?

Mr. POTTER. My understanding was that they wanted the settlers to acquire the lands under the State law.

Mr. SMITH. By paying $10 an acre for it?

Mr. POTTER. Yes.

Mr. SMITH. It is pretty hard on the settlers.

Mr. MAYS. That case, Mr. Finney, with regard to coal upon these school selections has been settled by the Supreme Court?

Mr. FINNEY. No; it has been decided by the circuit court, but it has not been reached yet in the Supreme Court.

Mr. MAYS. It is before the court now?

Mr. FINNEY. It is there on appeal now. It has not been briefed or argued yet.

Mr. MAYS. What was the last decision—before the court of appeals, wasn't it?

Mr. FINNEY. Yes; the decision below was in favor of the Government's contention, the court of appeals was in favor of the State, and an appeal was taken by the Government.

Mr. MAYS. What was the reasoning of the court of appeals dicision?

Mr. FINNEY. In two or three words, it was that the grant of the lands to the State of Utah did not contain any specific reservation of the minerals in the land, and that in many other State grants where Congress intended to keep the minerals it did contain the reservation, and therefore the effect was to pass the minerals to the State of Utah. But, of course, the Government has appealed that case to the Supreme Court.

Mr. MAYS. It is a very far-reaching case.

Mr. FINNEY. Yes; it will involve millions of dollars.

Mr. LA FOLLETTE. Have there ever been any exchanges made by the State of Washington and the Federal Government?

Mr. FINNEY. Mr. Lenroot asked me that question, and I told him that I thought many exchanges had been made—a number of them—prior to the decision of your Supreme Court in the Whitney case.

Mr. LA FOLLETTE. I see.

Mr. RAKER. Personally I think in those cases the Government will be estopped.

Mr. LENROOT. The purpose I had in mind was to ascertain whether the State of Washington had availed itself of the provisions of the act of 1891.

Mr. LA FOLLETTE. If Mr. Finney will permit me at this point, I should like to read the letter of the attorney general of the State of Washington.

(The letter referred to is as follows:)

You have submitted for my consideration a tentative draft of a bill which has been transmitted by the Interior Department to the Committees on Public Lands of the United States Senate and House of Representatives, with the intention of having the same passed in connection with the adjustment of the grants of lands to the different States for the support of their common schools.

The bill as proposed is one to amend sections 2275 and 2276 of the Revised Statutes of the United States, which provides for the selection of land for educational purposes in lieu of those appropriated. The two sections of the Revised Statutes referred to are a part of an act of Congress approved February 28, 1891 (26 Stat. L., p. 796).

Section 1 of the proposed bill provides for the confirmation and ratification of all selections made in accordance with said act of February 28, 1891.

Section 2 of said proposed bill provides for an exchange of lands between the United States and the several States in so far as the lands granted to the several States lie within the national forests.

Section 4 provides that sections 1 and 2 of the bill as proposed, shall be applicable only where the State, by constitutional legislative enactment, has signified its assent to the terms of said act of February 28, 1891.

I consider this bill objectionable in so far as it attempts to require the State of Washington to accept the provisions of the act of February 28, 1891, in order to secure the benefit of the provisions of sections 1 and 2 of the bill.

The grant of lands to the State of Washington for the support of its own schools, found in the enabling act of February 22, 1889 (25 Stat. L., p. 676), was a present grant, and it was therein expressly provided that the lands so granted should not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed.

The act of February 28, 1891, provides that where settlement prior to survey in the field shall have been made upon any lands granted to a State for the support of its common schools, that it may select other lands in lieu thereof from any of the unappropriated surveyed public lands within the State.

You will observe therefore that the act of February 28, 1891, has absolutely no application to the grant to the State of Washington, as in this State settlement prior to survey does not defeat the State's title to its common school lands. This was the holding of our supreme court in the case of State *v.* Whitney (66 Wash., 475).

The proposed bill only provides for an exchange of lands between the United States and this State where the lands granted lie within the boundaries of a national forest. It makes no provision for an exchange of lands where the State incurs a loss by reason of settlement prior to survey, or in any other manner.

If the proposed bill is passed and should be accepted by this State by a constitutional legislative amendment, assenting to the terms of the act of February 28, 1891, the grant of land to this State for the support of its common schools might then be defeated by settlement prior to survey in the field, and the State would be relegated to the provisions of said act of February 28, 1891, to indemnify itself for such losses.

It has been demonstrated in this State that the indemnity provisions of the act of 1891 are unavailing. At this time there is an alleged deficiency in our common-school grant over and above the loss by reason of inclusion of granted lands within the national forest in this State of approximately 200,000 acres, which has been caused in part by settlement prior to survey. These settlements have been made by reason of the refusal of the Interior Department to adopt the construction given to our common-school grant by the supreme court of this State in the Whitney case.

In the absence, therefore, of an act authorizing an exchange of lands between this State and the Federal Government covering losses of every nature, I do not think it would be advisable to sanction the acceptance of the act of February 28, 1891, as applicable to the grant of common-school lands to this State, or as amendatory thereto. If this State can not some time in the future arrange for a complete and satisfactory settlement and adjustment of this grant, it will be necessary for it to insist upon its title to those sections as granted in place, and force those whom the Interior Department has encouraged to settle on the State's lands to seek indemnity from the Federal Government, which we think will be granted as a matter of course.

At this time the legislation in Congress that is necessary to effect the contemplated exchange of lands between this State and the United States is an act embodying in substance the provisions of section 2 of the proposed bill, and a further provision for its acceptance by this State through the means of a constitutional amendment.

W. V. TANNER.

That may supplement, to some extent, the contentions I have made.

Mr. FINNEY. Just in that connection I want to repeat the statement that I have already made that the department has always maintained that the grant to the State of Washington does not attach as against settlers prior to the identification by survey, and that the act of February 22, 1889, is only a compact, a sort of executory agreement, between the Federal Government and the State of Washington, as to these unsurveyed lands, and that it was entirely competent for the United States Government to pass the act of February 28, 1891, and the acts which permit settlement upon unsurveyed lands, and it is entirely proper for us to allow settlers to make entry and receive

patents for the land, and the State of Washington has had notice of that in every case where the settler went upon unsurveyed lands. None of the cases have been patented without giving the State notice and opportunity to be heard.

Mr. LA FOLLETTE. Was the Government a party to that case that was decided by the Supreme Court of the State of Washington?

Mr. FINNEY. The Government was not a party. It was between the State and an individual.

Mr. LA FOLLETTE. Mr. Finney, in view of what you have said, how would you explain this passage in our enabling act:

> But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Mr. FINNEY. Well, my answer is that you do not know what part of a given area is section 16 or section 36 until it is surveyed; it can not be identified. You do not know whether it is Federal land or not, and it is impossible for the grant to operate upon such lands.

Mr. LA FOLLETTE. It may be true, but Congress should have known that, and not put in the word "unsurveyed."

Mr. LENROOT. They meant to furnish that uncertainty.

Mr. MCCLINTIC. That was their own ennabling act of the State of Washington.

Mr. SMITH. Why don't you amend your constitution?

Mr. LENROOT. They want to go on the forest reserve and make up their deficiency.

Mr. LA FOLLETTE. It amounts to 200,000 acres. The reservations on the forest reserve were set aside long before that.

Mr. POTTER. Might I say to clear up that point a little for the committee, that of this 200,000 acres that the State has claimed it lost there are about 71,000 acres that are surveyed school lands in the national forests. We would be very willing to give the State other lands if we were able to—if the law was such that we could.

Mr. LA FOLLETTE. Does that include the 200,000 acres which is apart from the 500,000? There was more of it in the forest reserve.

Mr. POTTER. This was reported by Mr. Tanner when he was here, 71,000 acres, and then there are 128,000 acres lost from school lands included in Indian reservations, and the position the department took on that was that it felt that the loss should be made good out of the Indian reservations at such time as they might be open to settlement, contemplating that that would be the case, as it has been in other States, and that the loss of 128,000 acres, which occurred in Indian reservations, ought not at this time be taken out of the national forests. And then there is also a loss reported by Mr. Tanner of 17,000 acres from settlement of unsurveyed lands which had been patented by the Interior Department.

Mr. LA FOLLETTE. So that 17,000 acres is all that is involved in the settlement?

Mr. POTTER. Yes, sir.

Mr. LA FOLLETTE. Much obliged for making that correction.

Mr. FINNEY. I think the Supreme Court has answered the question you asked as to why Congress—that is the recent decision, referring particularly to Heydenfelt *v.* The Danoy Gold & Silver Mining Co.,

which dealt with a grant in Nevada, and it explains why Congress could not have intended to grant the unsurveyed lands in place. It was because at that time it might have withdrawn the whole State from settlement.

Mr. LA FOLLETTE. I read that this morning, and said of course, if the Supreme Court should affirm that decision and hold it was applicable to Washington, we of course would be satisfied.

Mr. RAKER. Mr. Finney, I would like to ask you a question. Section 3 of the bill, page 4, lines 6, 7, and 8 reads:

Provided, That in future no such exchanges shall be made or approved except as provided in section two of this act.

Now just what is the purpose of that? You have given it generally as to the other States.

Mr. FINNEY. Section 2 provides of course for exchanges for losses in forest reserves and for surveyed lands given up in forest reserves. As I understand it the purpose of that proviso is that hereafter in making new exchanges, the selected lands shall be taken up somewhere within the limits of the forest reservations.

Mr. RAKER. Now, what is meant by that provision? Why does the Department of the Interior want it?

Mr. FINNEY. There are several reasons. The first is that otherwise the forest reserve would be increased in area at the expense of the public domain outside if the State were permitted to give up lands inside the forest and select them outside on the public domain.

Mr. RAKER. What effect would that have; what financial effect would that have to the State?

Mr. FINNEY. It is pretty hard to answer.

Mr. RAKER. I know the Government would get more land in the reserve; that would be the effect it would have on the Government, but why ask the Government about that?

Mr. FINNEY. I suppose it is the policy of Congress not to increase the acreage of the forest reservations. Congress passed two acts recently providing that no additions should be made to the forest reserves without the consent of Congress.

Mr. RAKER. Is that the main reason for it?

Mr. FINNEY. That is one reason. Another reason is that this stuff would be used virtually as scrip. If selections were permitted to be made outside the forest reserves, a man who wanted a scrip of 160 acres or a 40-acre tract of land, could go to the State land office and say, "I want 40 acres of land in your county. I want some forest-reserve scrip." And your surveyor general would select 40 acres in the forest reserve as a basis for the exchange and give it to the party and he would go out and use the scrip. I do not know that the Federal Government is very deeply concerned over it, but it was thought not to be very good policy to encourage the passage of any further scrip act.

Mr. RAKER. Under that act of 1909 this right of exchange is sold at public auction, isn't it, Mr. Kingsbury?

Mr. KINGSBURY. Yes.

Mr. RAKER. And it is open to competitive bids upon a day fixed. The land is described and advertised, and the bid is placed at the surveyor general's office at the city of Sacramento, at the capitol, and the right to exchange is put up at public auction and parties desiring to bid have an opportuntiy to bid upon it?

Mr. FINNEY. That is since California has reformed. This deals not only with California but with other States. There are plenty of other States in the Union that haven't that beneficial law.

Mr. RAKER. But California has that beneficial law which is operating well, and is it right to deprive it of this opportunity to dispose of the rest of the school lands within the forest reserves?

Mr. FINNEY. No; we thought we were doing a favor by this provision.

Mr. SMITH. That is true, but the State is not selecting this land under the public land laws. The act curtails the domain if it is made outside of the forest reserve.

Mr. FINNEY. Under this proposition you could get together and select timberland in the forest reserve, that could not be found on the public domain at the present time.

Mr. RAKER. Suppose a man would prefer a tract of land not within the reserve and would pay two or three or four times the rate to the State to get the right to make the exchange of the tract in the forest reserve for the land he has outside.

Mr. FINNEY. It shows that it is used as scrip. Possibly in an isolated case of that kind the State would receive a larger monetary return. In the long run I think it would receive a greater return the other way.

Mr. RAKER. Isn't it a fact that one of the great values to the State of this act of 1909 and the public competitive bidding is the fact that if a man desires an isolated tract here and there and he is willing to pay a price for it, he can get it?

Mr. KINGSBURY. Yes; that was explained yesterday, I think. A Washington man said that they were getting $10 an acre for land that did not amount to anything, but that a man needed it to fill out his ranch.

Mr. RAKER. Is there anything legally, morally, or equitably wrong in doing that if, in the first place, the State gets three or five times as much for its land; and secondly, if the Government disposes of isolated, barren, and seemingly worthless tracts of land; and thirdly, you do not affect the timber? Now, should the State be deprived of those benefits?

Mr. FINNEY. Assuming that those propositions are correct, I should say no.

Mr. RAKER. They are true. And I wanted to know if there are any intentions that it should not continue as it is in California.

Mr. FINNEY. Oh, no; we have no special reference to California, and have no particular desire to insist on that provision. We leave it entirely to Congress. It is a suggestion on our part.

Mr. RAKER. About how many acres of this land in California are there that have been selected by the State, about 80,000, Mr. Kingsbury?

Mr. KINGSBURY. Yes.

Mr. RAKER. Now, if what I have stated is true, that men do do these things, and pay the State a very large price for the right to select this land, it would be in the interest of the Government and of the State, as well as reserving the land in the forest and the timber on it, wouldn't it?

Mr. FINNEY. No, sir; I do not think so, for the reasons I have stated. I do not think in the long run the State would get any more

that way, and I do not believe that it is particularly advisable for the State to engage in that kind of business. I think, ordinarily, the State should handle its school grant in as large and economical a manner as possible, and I believe it would be more economical if they got the land en bloc. I believe it would be more economical to the Federal Government and to the State.

Mr. RAKER. But if the State could sell in 40, 80, and 160 acre tracts?

Mr. FINNEY. I think it would not be good judgment to surrender school selections in forest reserves worth $200 or $300 per acre, and let it be sold out for desert lands.

Mr. RAKER. You are assuming things that do not exist. Not much of this land in the forest reserve is very good timber land. Some of it has hardly any timber on it at all.

Mr. FINNEY. And some of it is very valuable, and the State gets its share of the good and bad, the sections being in place. Now, under this proposed exchange they will get lands of substantially equal value.

Mr. LENROOT. It might be more lands or less.

Mr. FINNEY. Yes; but of equal value.

Mr. SINNOTT. Is it contemplated by this act that the State must make an exchange of all its lands within the forest reserve?

Mr. FINNEY. No; I do not understand that it is intended to compel the State to make an exchange of all its lands within the forest reserve.

Mr. SINNOTT. It says all surveyed and unsurveyed sections in place granted or reserved to the use of schools and included within national forests. Must the State make an exchange of all its holdings within the forest reserve or can it put up some sections for exchange and keep others?

Mr. FINNEY. I do not understand that this act intends to compel the State to exchange all the lands within a given forest reserve at the same time. I do not think they have the right to do that as to the surveyed sections. In such cases title has passed to the State. I think it is optional for the State to surrender them, and if they do so it will select lands of substantially equal value.

Mr. RAKER. Suppose that in the present forest reserve there are considerable of those lands that are poorly timbered. Now in making lieu selections for the State you simply give the State its present value so far as the timber is valued on the lands now claimed by the State.

Mr. FINNEY. The deals now pending provide for an exchange of areas of substantially similar value, value of the land and timber, as I understand it.

Mr. RAKER. Supposing that there are 10,000 acres in California in the reserve owned by the State which is thinly covered with timber. Now in making that exchange of 10,000 acres for another tract of land, would the State be given simply the value of the timber on this land in exchange for other lands or could it consider a like number of acres of timber land, heavily timbered?

Mr. FINNEY. I understand that the exchange would be on the basis of value, not upon quantity. It says lands of approximately equal value.

Mr. RAKER. Then if there were 10,000 to 15,000 acres of this land that was thinly covered with timber, and the State was entitled to it, under a statement you have just made, it would only get the approxi-

mate value of the timber on the land. In other words, you might get in lieu of that 10,000 acres of thinly timbered land, whereas if you gave to the State the right to make the selection, and they could sell it at public auction it would bring them from $10 to $25 per acre.

Mr. FINNEY. They might sell it, but I do not know what it would bring. I do not think it would bring $25, when scrip is selling for $12 and $15, though the department is not particularly insistent upon that clause. It has no vital objection to making the act read so that the State can take the land within or outside the forest.

Mr. TAYLOR. Mr. Finney, I have a telegram here from the governor of Colorado in which he says:

> Upon receipt of your letter I referred the matter to the land board for information. They have not acted. This question occurs to me: Is the power to exchange, as provided in this bill, limited to exchange of lands within the forest reserves. That is, if this bill is passed, can we sell or exchange State forest reserve lands for lands outside our forest reserves. If the new bill does not permit of the exchange both within and without the forest reserve, I believe it is detrimental. If it does permit such exchange, it seems to me that it is a good bill. It has been suggested that the proposed bill may prove cumbersome in operation. State must first deal with Secretary of Agriculture, then Secretary of Interior, then with President. Am promised early opinion by land board and will transmit same as soon as received.
>
> GEORGE A. CARLSON, *Governor.*

What is the effect of allowing an exchange within and without the forest reserve? Is there a limit to that?

Mr. FINNEY. The bill as now drawn will permit only the exchange of State lands within forests for other lands within the reserve.

Mr. TAYLOR. Why should there be that limitation upon that?

Mr. FINNEY. Judge Raker asked me that, and I have discussed it quite at length.

Mr. TAYLOR. Is that something the department insists upon?

Mr. FINNEY. No. We submitted it for consideration.

Mr. RAKER. I think it is so important for your State and our State that it ought to be thoroughly considered by the committee.

Mr. FINNEY. We thought this, Mr. Taylor: For one thing, it would prevent additions to the forest reserve, which is something apparently Congress does not want to make; and, secondly, perhaps these State selections would be treated like scrip, they would be virtually scrip, for you could select lands outside; and thirdly, we thought the States would get more out of it by selecting blocks within the forest reservation than by selecting lands outside.

Mr. TAYLOR. I think personally in Colorado the better land is in the forest reserve, but at the same time I would not want to compel them to limit their exchanges because it might be mutually advantageous to let them have the right to select both.

Mr. FINNEY. Mr. Mondell is anxious to have the right to select land outside. I spoke to Secretary Jones, and told him Mr. Mondell's contention, and he said he thought that matter should be left to the discretion of the committee and Congress.

Mr. MAYS. You are very sure that it is optional with the State after it has become a law, or will they have to make these exchanges?

Mr. FINNEY. I do not think we could compel them with regard to lands where the title is now in the State. I mean surveyed sections, where the title has passed. Of course, now as to the unsurveyed section, or where a settler has acquired rights before the survey, there is no option with the State.

Mr. RAKER. Provided that in the future such exchanges may be made or approved as "provided in section two of this act, or for lands without a forest reservation in the discretion of the State." That is not the proper language, probably, but that idea would be all right carried out, wouldn't it?

Mr. LENROOT. You would have quite a serious matter of administration if the Government has got to examine every little piece of land to determine the quality or value outside the forest reserve.

Mr. FINNEY. Yes; we would have to exchange them on the basis of value.

Mr. RAKER. I suggest that in order to get it to your attention. Will you draw an amendment for the committee to cover that feature?

Mr. FINNEY. Yes; I will.

Mr. SMITH. Isn't that what Mr. Mondell wanted?

Mr. FINNEY. In other words, you are not objecting to the provision for a consummation of an exchange within the forest, but you want the State to have the right to give up land in the forest and go out somewhere else.

Mr. LENROOT. Do you want to have selection outside based upon area alone?

Mr. RAKER. Yes; for this reason. I know there is much poor land outside of the forest. It is so situated and so located that men might purchase it from the State, the money to go to the school funds, at a good fair value, in order to get the opportunity to get this particular land, and the State will get the fund and the Government in addition will be benefited by it because we will not take the timbered lands.

Mr. LENROOT. I want to suggest that I do not think it is a wise practice upon exchange of title to relinquish their title or exchange their title and then have an adjustment at a long time in the future. It seems an exchange of the title and the whole thing ought to be settled then.

Mr. RAKER. Not all at once; no.

Mr. LENROOT. Yes; within a reasonable time.

Mr. RAKER. That would not be beneficial to the State; it ought not to have to be disposed of now.

Mr. LENROOT. No; it is right to get this title.

Mr. RAKER. Suppose they have not made the selection?

Mr. LENROOT. But when they release any to the State.

Mr. RAKER. Yes; that ought to be adjusted at once.

Mr. LENROOT. I gather from what you said that California lost its right to exchange?

Mr. RAKER. Yes.

Mr. LENROOT. And then the private party can come in and exchange his by piecemeal?

Mr. RAKER. No; if I understand it—and if I am incorrect, Mr. Kingsbury will correct me—the State itself disposes of a certain tract of its land within the reserve. The party then makes his application and states the particular type of land he wants and then bids on this offering and obtains the right from the State to make an exchange, and if his offer is the highest for the tract of land he wants to get the land is sold to him. Is that right?

Mr. KINGSBURY. No, the idea is this: We have 640 acres that has been settled by the State, and not held in the forest reserve. If we sell that in 40-acre tracts, we sell the right to select Government land in lieu of that 40 acres. He doesn't care what he gets. He gets 40 acres that he can exchange for 40 acres of Government land. If we have four 40-acre tracts put up and five bidders, they are going to bid against each other.

Mr. LENROOT. That is a scrip proposition.

Mr. FINNEY. Absolutely.

Mr. LENROOT. It is not a good thing.

Mr. KINGSBURY. The Government has always permitted it.

Mr. LENROOT. It should have been stopped.

Mr. KINGSBURY. As we sell the scrip the scrip can be changed into land piecemeal.

Mr. FINNEY. The Government does not know anything officially about that deal. The first thing we know about it is when the State with the selection list, saying we have lost 640 acres in a forest and we want to get 640 acres outside the reserve. We don't know anything about the sale and don't recognize the purchasers and deal only with the State.

Mr. LENROOT. That is true, but you have to make an agreement with the State under section 3. I am not speaking of an indemnity but I am speaking of an agreement to exchange.

Mr. KINGSBURY. That is, under this bill you can't do that. Judge Raker wants the right.

Mr. RAKER. In addition to what Mr. Kingsbury has said, when the man is declared to be the highest bidder, then he gives his application to the State and they make application. That is what I was getting at; that the man has eventually to furnish the State the land that he desires to have exchanged.

Mr. LENROOT. What I mean is this: Section 3 reads that exchanges of title are ratified and confirmed. It should not be definite on the one hand and indefinite on the other. When the agreement is concluded the title should pass at once to the State and the relinquishment made.

Mr. RAKER. But when the State has heretofore been selling the lands at $1.25 per acre and it offers this land at public auction in order that everybody may bid, it gets around $10 per acre for the 40 acres. The successful bidder then presents the particular tract, the 40-acre tract that he wants, in exchange for the base. He bought the right to have the exchange from the Government. He submits it to the surveyor general of the State, who in turn makes application for the 40-acre tract. The State gets its $8.75 more for the tracts of land that is not within the reserve. It is not a power site nor a reclamation tract, and it may be absolutely barren; but it is lying close to a man's farm and he wants it and is willing to pay $10 an acre for it to round up his farm, and he is paying $10 an acre into the State treasury, and the Government is not losing because we do not even take timberland to make the exchange.

Mr. LENROOT. That is all right; it does not apply to indemnity, but when we come to express exchange of title as is contemplated by section 3, I think I should be opposed to putting a scrip proposition into it at all.

Mr. RAKER. The proposition is this and that is the reason you should not compel the State to accept this exchange in value in a body for land in the reserve, it may be very disadvantageous to the State for handling. Now unquestionably if the State has 50,000 acres of land put into a buffalo reserve, unquestionably it would not be carrying out the provisions of the grant to dispose of that land for school purposes.

Mr. LENROOT. But under section 3 when you find out about the lands within the forest reserve, it is clearly contemplated that there shall be an exchange of land and a right to select in the future, running over a period of years, but it should be an exchange taking effect at the time of the conclusion of the agreement. Now if you go outside of that you would certainly have to guard this language more carefully than it is guarded now, because it does not contemplate an exchange but a right to exchange. I don't believe that the Government should authorize any officer on an exchange basis, where they have no right of indemnity but only an exchange to treat it as a scrip proposition.

Mr. SINNOTT. What is it you auction off, the base?

Mr. RAKER. Yes. Clearly the base alone.

Mr. FINNEY. The right to use the base.

Mr. KINGSBURY. We do not sell the title to the land. We sell the right to authorize the exchange of the land.

Mr. SINNOTT. You find a piece of land that is setted on.

Mr. KINGSBURY. No. If you find vacant land that you want, you would go to the surveyor general and say, "I want to bid for 40 acres of scrip." I tell him the sale will be held on a certain day. He says he wants to bid on 40 acres. He bids on the 40 acres and the man who bids the largest amount has the right to authorize me to exchange that 40 for a piece of United States land that he wants.

Mr. SINNOTT. It is the auction of the base.

Mr. LENROOT. Not the base, but he gets a right to the base through the sale.

Mr. SINNOTT. But indirectly it is the sale of the base.

Mr. KINGSBURY. But you don't give title to the base.

Mr. SINNOTT. You have got to have your lieu land in order to get the base.

Mr. KINGSBURY. Yes.

The CHAIRMAN. Mr. Finney says that he can round out what he has to say in 10 or 15 minutes.

Mr. RAKER. This is so important to my constituents that I feel justified in having Mr. Finney explain it. I want to ask Mr. Finney if it would be a carrying out of the grant in the act of Congress giving the sixteenth and thirty-sixth sections for public-school purposes, to permanently devote this land to parks, and hold it indefinitely by the State undisposed of?

Mr. FINNEY. I don't know that that is a question that I ought to discuss. I imagine it might not produce as much revenue to the school as if sold at auction. On the other hand, to handle it as a State forest, it might possibly produce a revenue equal to what might come from the sale. That is a question I could not answer. I think the contemplation of the grant was that these lands, the proceeds of these lands, should be used for the support of schools,

be a source of revenue to the State. Just how much the State is going to get out of it is a question I can not answer. I do understand that Idaho expects to realize a very large amount of money for the school funds from the sale of timber on an agreement with the Agriculture Department, and in that case I think Idaho will realize more out of it than by selling scrip rights to private individuals. Whether that would be true generally is a question that I can not answer. It would depend somewhat on the State, and the way the thing is handled.

Mr. POTTER. In the agreements that we have entered into with the different States, we have attached no condition whatever as to what the States should do with the land after they acquired it. It is entirely in their discretion. In the State of Idaho it is the intention to hold those lands as a State forest, for the reason that they would produce good revenues to the schools of the State. In the State of Arizona a selection was made under their quantitive grant rights of a very large area of timberland. That is now within the Coconino National Forest and the property of the State university. They are holding it as a State forest, selling the timber to sawmills, and giving the proceeds to the State university. It is good timberland and has given them a good revenue. But so far as any of these exchange agreements are concerned, we have attached no conditions as to what the State should do.

Mr. LENROOT. Let me ask you as to the agreements that have been made as to exchanges. Are those agreements merely agreements granting a right to exchange in the future, or a completed exchange when the agreement is ratified?

Mr. POTTER. It is completed when it is ratified.

Mr. LENROOT. The lands on both sides are designated.

Mr. POTTER. Yes, sir; we contemplate that it will be a complete exchange when the agreement is ratified.

Mr. LENROOT. So that the same thought that was in mind with reference to the provision of section 3 that section 3 shall only authorize the same kind of exchanges, the agreement stating specific lieu lands and a base.

Mr. POTTER. Yes, sir; so far as the surveyed land was concerned.

Mr. LENROOT. It did not involve the kind of agreement that would give the State the right of selection for an indefinite time of lieu lands?

Mr. POTTER. No, sir.

Mr. LENROOT. Such as Judge Raker contemplates?

Mr. POTTER. No, sir.

Mr. LA FOLLETTE. May I ask you a question, too? Mr. Potter brought up the question a while ago in describing this 200,000 acres that the attorney general of Washington referred to as apart from the 500,000 acres of the agreement that had been entered into between the Agriculture Department and the State of Washington, and he mentioned the 128,000 acres of lands as Indian lands, in the confines of Indian reservations, and that the State of Washington had wanted to take lieu lands for that inside of the forest reserves. Now, what is the Interior Department doing in regard to those lands, as Indian reservations are thrown open? Does the State of Washington get the sections in place in those Indian reservations?

Mr. FINNEY. I presume that these are Indian reservations that antedated the admission of the State. In these cases we undoubtedly could let the State get the right to lieu lands for land in place within reservations. If all it had was a loss it might be satisfied through indemnity selections. Congress might provide when it opens up an Indian reservation that the State should have sections 16 and 36 in the reservation. It probably would have to compensate the Indians for those sections.

Mr. LENROOT. Do you mean the Indian reservation was created afterwards?

Mr. FINNEY. The State does not lose title. I am talking of reservations which were created before the State was admitted.

Mr. LA FOLLETTE. Have we none that have been created since the admission of the State?

Mr. FINNEY. Yes; but our old Indian reservation long antedated the admission of the State into the Union, consequently the State did not get anything in place within those reservations by the act of 1889.

Mr. LENROOT. Now, Mr. Finney, isn't there a line of decisions that even as to Indian reservations title passes to their rights when created when the reservation is abandoned or otherwise; that the Indian's right is a right of perpetual possession? That is my recollection. The Hitchcock case held that, didn't it?

Mr. FINNEY. I was thinking of those swamp-land cases, but my recollection was that the decision there was that the swamp-land grant did not attach to the Indian reservation existing at the date of the grant.

Mr. LENROOT. My recollection is just the other way.

Mr. LA FOLLETTE. What I was trying to get at is if Mr. Lenroot was right then Washington would not have any claim on the forest reserve and, in view of the fact that Mr. Potter says that 71,000 acres of land are lands that have already been surveyed in forest reserve and the only fact that has prevented exchange is lack of legislation, and that there would only be 17,000 acres in controversy, and in order to settle this question of præsenti and futuro, you had better let them have 20,000 acres out of that forest reserve and let us pass this bill.

Mr. FINNEY. The Interior Department does not control the forest reserve.

Mr. LA FOLLETTE. If that was all that was involved, the Agricultural Department would not make us any trouble.

Mr. FINNEY. Mr. Sinnott has handed me a letter from the governor of Oregon and asked me to comment on it. He writes with reference to this bill, and seems to be under the impression that if it is enacted it would cut out the State from securing indemnity lands for school sections, lost by reason of their being mineral, where the townships were fractional, or where the homesteaders had gone upon the land prior to the survey. That was not the purpose of the act, and I do not understand that it does so. Section 1 declares the act of 1891 applicable to certain grants, naming them. It does not mention the grant to the State of Oregon. Its rights are defined in the grant of 1859, so far as we know. Neither the State of Oregon or anyone else has raised any doubt as to the right of the State of Oregon to take indemnity for loss of mineral lands or for settlements under the act of 1891. She has been making the selections and we have been approv-

ing them, and that practice is sustained by not only the departmental decisions, but by this Supreme Court decision in the Morrison case, and I do not think there is anything in here which would abrogate the rights of the State in that respect or repeal the act of 1891. It is not intended to. The purpose of this act is to extend the operations of the act of February 28, 1891, to all the States who have unadjusted school grants.

Mr. LA FOLLETTE. Do you know whether when the north half of the Colville Reservation was opened—you are probably not in the Indian Department—but do you know whether the school lands in the north half were granted to the State or were they all allotted to Indians the same as any other lands that they wanted, or nothing done about it?

Mr. FINNEY. My recollection is that the act of Congress did allow those lands to the State, provided that where the Indians were actually occupying any part of those sections for allotments the State might select something else in lieu. On looking at the act of July 1, 1892, I find it was restored to entry under the general land laws.

Mr. LA FOLLETTE. That was fixed in the act of Congress?

Mr. FINNEY. Yes; according to my recollection. I know that has been done in a number of instances in Montana and the Dakotas. Mr. Potter has handed me the enabling act of North Dakota, and it says:

Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain.

Mr. LA FOLLETTE. Now, that of course upholds Mr. Lenroot's view of the case—that the State would be, as soon as those reservations were opened, entitled to those lands from the reservation or else indemnity for the settlers that were on there. Wouldn't you take that view of it?

Mr. FINNEY. Possibly that would be so. I didn't have that in mind when I made my answer, because ordinarily land in a permanent reservation does not pass to the State. If Congress made a specific provision, that covers the situation.

Mr. LA FOLLETTE. I was wondering if that provision had been made. They are talking of abandoning the Colville Reservation now.

Mr. FINNEY. My recollection was that it was made a specific provision of the act itself, but I find that it was an Executive order reservation, vacated and restored to general disposition by act of 1892.

Mr. SINNOTT. Did you take up all of those objections urged in the letter that Gov. Withycombe wrote?

Mr. FINNEY. Then the governor objects to section 2 because of the fact that it limits the exchanges of title to forest reservations; that is, for the lands given up in the forest reserve the State is required to take other lands in the forest reserve. He also objects to the provision that the land selected should be of approximately equal value. He says in that respect he thinks it would be unjust to the State to have the selection curtailed by this law.

Mr. RAKER. Practically all of the States we hear from are of the same opinion—both objections.

Mr. LENROOT. They want both, that is natural enough.

Mr. FINNEY. He emphasizes again the proposition that the State would become confined to the limits of the forest reserve. Then, going on to section 4, which requires the States to ratify the provisions of sections 1 and 2, he says it would seem to be an unnecessary burden to place upon the State, as the act of Congress of February 14, 1859, covers this point.

Mr. SINNOTT. Does it?

Mr. FINNEY. The act of 1859, referred to by the governor, section 4, which is quoted on page 16 of the record, says:

> The following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit, first, that sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the said State for the use of schools.

Now, that was accepted of course by the State of Oregon, and I assume that this constitutes a sufficient constitutional legislative authority for the State of Oregon to take advantage of the act of 1891.

Mr. SINNOTT. Well, do you think that the State would have to pass additional legislation assenting to this mandatory act in view of the fact that the State land board is authorized in its discretion by an act of the legislature to purchase lands in school sections within national forest reserves in Oregon, and so on?

Mr. FINNEY. Yes, apparently, because this section 4 requires that the State shall by legislative enactment signify its assent to the terms of the act of 1891 as herein declared and amended.

Mr. SINNOTT. Then we would have to take some future action.

Mr. FINNEY. Yes.

Mr. SINNOTT. We are not in any way restricted by any constitutional provisions in Oregon?

Mr. LENROOT. This is declaratory of the right which you have, section 3. You would find that in forest reserves you would have to accept it in order to be bound by it.

Mr. SINNOTT. Yes; but if we cared to go ahead and make the exchanges now, there is nothing to prohibit us now. As I understand it, if we wish to make such exchanges as are contmeplated in this bill before that we could do so.

Mr. LA FOLLETTE. I see that this act was drawn with the idea that Oregon would not be affected by it, because it does not say that sections 2 and 3 shall be ratified by the legislature.

Mr. LENROOT. You can make the exchanges without ratifying it.

Mr. LA FOLLETTE. I do not think that we would have to assume that burden.

Mr. SINNOTT. We could make the exchange without any constitutional legislative enactment or any legislative enactment.

Mr. LENROOT. That is right.

Mr. SINNOTT. Right now, if the Secretary of Agriculture and the State officials agreed upon any exchange at the present time, what is to prohibit?

Mr. LENROOT. Nothing.

Mr. FINNEY. No; the provisions of section 1 are that the act shall be declared applicable to the grants of school lands, and section 2 deals with exchanges of title in forest reserves. If the State desires to give up its forest reserves and secure land within the forest, they would have to comply with section 4 as it stands before they could consummate presumably. I do not understand that it does fix your right to take indemnity for loss under the act of 1891, because the Department of the Interior has been approving such selections right along, the question not having been raised as to the right of the State to make those new selections.

Mr. SINNOTT. Well, what is there to prohibit the State right now from exchanging its surveyed lands in the forest reserve or its unsurveyed lands for a solid compact body?

Mr. FINNEY. There is no provision of law; but the courts of California have held that it has no right to give up those surveyed school selections and exchange them for other lands. That has put such a doubt in the minds of the officials of the Interior Department that they do not feel warranted in consummating any kind of exchange. I do not know of any reason why you could not surrender unsurveyed lands under the provisions of the act of 1891 and select other lands in lieu thereof.

Mr. LENROOT. Now, Mr. Finney, just what is the act of 1891 after you have added the new section to it? Suppose this bill is passed in its present form, and the State does not accept the provisions of sections 1 and 2 as provided in the act. Where does it leave the State?

Mr. FINNEY. It leaves it with its selections all unadjusted and unapproved.

Mr. LENROOT. Well, what with reference to further selections and any further indemnity, anything hereafter? They can't proceed under the original act of 1891, because it is amended, and they can not proceed under the amended act without accepting.

Mr. FINNEY. I am inclined to think they would be absolutely blocked unless they accept these provisions.

Mr. LENROOT. They would all have to come in under section 3 and exchange.

Mr. FINNEY. Yes. Of course if section 4 were entirely omitted from the bill, I presume the Interior Department would still have devolved upon it the duty of finding out before consummating exchanges with the State whether the State officers had the authority to make the relinquishments or the exchanges. In the cases where we found they had no such authority, why we would have to refuse to approve the selections.

Mr. TAYLOR. Mr. Finney, you have listened to the various objections and questions about this bill. Can you draft an amendment that will harmonize with all of those?

Mr. FINNEY. It will be almost impossible.

Mr. TAYLOR. And please Mr. Raker and the others and the department and send it to us?

The CHAIRMAN. If he could his home would not be on earth.

Mr. RAKER. I want to please Mr. Taylor, also, Mr. Finney.

Mr. SINNOTT. The language is:

That as to all surveyed or unsurveyed sections in place granted or reserved to the use of schools and included within national forests, it shall be lawful for the State, in pursuance of an agreement either prior or subsequent hereto between the State and the Secretary of Agriculture, to relinquish its claims.

Could that be interpreted to mean as to all or any part of the surveyed or unsurveyed sections, etc.?

Mr. FINNEY. That is the way I interpret it. I do not understand that that compels the State in a single exchange, in a single transaction, to surrender their surveyed and unsurveyed school selections that are in the forest reserves.

Mr. LENROOT. Change "all" to "any" to make it clear.

Mr. SINNOTT. "All," or "any."

Mr. LENROOT. Say "any."

Mr. FINNEY. Substitute the word "any" for "all"; that would do it.

Mr. LENROOT. You have an amendment with reference to section 1 with reference to mineral lands.

Mr. FINNEY. That was contained in the letter addressed to the committee. I do not think it was put into the record.

If I may have two or three minutes I want to say a few words about the effect of the selections since the doubt has arisen by these decisions as to the right of the State to make these indemnity selections or exchanges. Various parties have advised settlers and applicants that pending selections made by different States were invalid, and that consequently the lands covered by the selections might be acquired by individuals through homestead settlements or homestead applications or timber and stone applications. The result has been that we have had a flood of applications presented to the local land office which have been rejected and then sent to the General Land Office and rejected there.

Mr. RAKER. Does this bill affect adverse applicants for this land in any way?

Mr. FINNEY. This bill proposes to ratify and confirm all pending selections, and there is this class which I spoke of that tried to get the land by applications under the timber and stone laws, and whose applications have been rejected.

Mr. RAKER. Put them out?

Mr. FINNEY. Yes.

Mr. RAKER. Is there any provision in the bill that all valid claims should be allowed to stand?

Mr. FINNEY. That is just the question I was going to touch on. How can a man get a valid claim by filing on lands which are segregated?

Mr. LENROOT. Before approving this they would have to find that the selection was valid, and then the selection would be invalid.

Mr. FINNEY. Now, here in a few words is the holding of the department. It is uniform and has been uniformly followed for many years:

> Pending the disposition of a school indemnity selection, even though erroneously received, no other application including any portion of the land embraced in such selection should be accepted, nor will any rights be considered as initiated by the tender of any such application.

Now that rule was commented on in Holt *v.* Murphy (207 U. S., 415). The court said:

> Such a rule, when established in the Land Department, will not be overthrown or ignored by the courts, unless they are clearly convinced that it is wrong. So far from this being true of this rule, we are of opinion that to enforce it will tend to prevent confusion and conflict of claims.

The CHAIRMAN. You could not take the course suggested by Judge Raker on account of Mr. Lake, his client, out there, making it a business of carrying people around.

Mr. FINNEY. He has been disposed of. There are hundreds of such applications.

The CHAIRMAN. They write in to me.

Mr. FINNEY. All these decisions of the department and courts have given them no rights. Mr. McDonald and Mr. Bergeson, who appeared before the committee recently, addressed a letter to the department yesterday in which they referred to the provision in section 1 that pending and unapproved selections, if otherwise regular and subject to selection at the date of approval, may be approved and then refer to the proposed amendment, which I will discuss in a moment, and say that they represent certain settlers upon land embraced in the selections made by the State of Montana, and that they assume that the bill as drawn and submitted by the department, does not protect those settlers. We did not have that in mind, because we did not know that there were any such, and we put in that clause "and for lands subject to approval," in order to protect power sites and mineral lands from being patented as State selections. There are many selections on the oil lands in California made by the State and individuals using the State. Of course we do not care to have them ratified and confirmed. I talked with Mr. Bergeson and Mr. McDonald and told them it was a matter to take up with the State officials and dispose of there rather than by this law. I do not see that the Department of the Interior is especially concerned.

Here is the State of Montana, which has made a number of selections which are pending here and which will probably be ratified by this bill if enacted into law. Citizens of the State have gone on there and established a residence and want to get their lands as homesteads; technically, the land is not open to entry. We will be compelled to reject their applications if presented. I suggested that they take the matter up with the State land board, and if the State saw fit to yield up to the settlers and give up the land, that would solve the difficulty.

Mr. RAKER. Just how do you draw that conclusion? If a settler has no claim at all and it is all clear sailing, why then this legislation? The State must have some doubt as to its right, doesn't it, and this legislation is for the purpose of affirming those claims? Without the legislation the settler might get the land, might he not? If not, I would like to have you explain. I would like to understand it.

Mr. FINNEY. Judge, I think it is for the purpose of removing doubts raised under recent decisions of the courts in California, Idaho, and Washington. Personally I doubt that any of those decisions are good law.

Mr. RAKER. If those decisions do state the law, then the homestead claimants might have some rights?

Mr. FINNEY. Yes.

Mr. RAKER. As a matter of fact, this legislation is to secure the State's claim, and by doing that the homestead claim would be eliminated.

Mr. FINNEY. Would be eliminated, but I do not understand that he has the right, because there has been no final determination of the

court of last resort that any one of those State selections is invalid. There has been a doubt, and the thought was to have Congress remove that doubt. The legislation is not based upon the idea of the department that these selections were bad when made.

Mr. LA FOLLETTE. I understand that Montana would have a right, under the rules of the department, to amend their filings of selections and that you would allow them to take lieu in place of anything that they would allow these settlers.

Mr. FINNEY. They could surrender the selections upon which these settlers are living and take other lands.

Mr. LENROOT. May I call your attention to line 11, section 1, page 2:

If otherwise lawful, are hereby ratified and confirmed.

Now, doesn't that contemplate an absolute ratification upon a certain state of facts existing? And without a finding of the concurrence of that state of facts?

Mr. FINNEY. It would not relieve the Interior Department from finding that there was a loss of land, a surrender of a piece of land, which the State has not sold to someone else. It would not relieve us from examining into the question as to whether the land selected by the State was a parcel of the public lands subject to selection.

Mr. LENROOT. Even though you had approved it. This is where you have already approved:

And all selections heretofore made and approved under said grants * * * if otherwise lawful, are hereby ratified and confirmed.

That is right in the bill.

Mr. FINNEY. I do not recall the occasion for that clause.

Mr. LENROOT. You see what I had in mind, do you? It is an absolute ratification as to these unlawful entries, and there is no determination of that fact.

Mr. FINNEY. I really do not recall the reason for that clause being inserted.

Mr. LENROOT. It seems to me that if they were made and approved in the grants in accordance with the act there is no reason why the consummation should not be absolute.

Mr. FINNEY. It seems to me that it should be omitted, but as to pending selections it is all right.

Mr. RAKER. I would like to have one statement from Mr. Kingsbury before the committee adjourns in regard to the State's attitude as to the position taken with regard to reserving certain rights against the lands of the State that are selected. Do you desire to say anything further on that?

Mr. KINGSBURY. The State selected some 70,000 acres of land under the act of 1891 which was unappropriated nonmineral public land, and years after it was selected, before the department acted on the selections, the lands were included within the forest reserve. The proclamation creating the forest reserve excepted from the force of the proclamation those entries, protecting the interests of the State. Under this bill, the wording that was just suggested, "For public lands subject to selection at date of approval," would knock the State out of those 70,000 acres which Congress had unquestionably granted to the State. We do not want Congress at this late

date, 18 years after it was granted to the State, to take it away from the State by this legislation, which it does. I think that is a fair statement.

Mr. LENROOT. You object to the amendment.

Mr. KINGSBURY. I was speaking about Mr. Potter's amendment which provides that the Secretary of Agriculture would have authority to withhold any lands that should be withheld.

Mr. POTTER. Any lands that may be needed for public purposes, such as the protection of municipal water supply, or some great public purpose, not otherwise to offer any objection at all.

Mr. KINGSBURY. Well, of course, as it appears it would give authority to withhold lands for any purpose if it was thought it was within the interest of the United States, but as Congress granted those lands to the State we do not think any such provision should be included in this bill.

Mr. RAKER. So far as the California 70,000 acres is concerned, they have been settled and the selections are now pending.

Mr. KINGSBURY. In 1910 an act was passed authorizing the President to withdraw certain lands and the power bill, No. 407, provides that where lands have been withdrawn under that act for power purposes the State shall have the right to the lands, reserving in the United States the right to enter and use the lands for power purposes. Now, that amendment will be very acceptable to the State, and we would like something of that kind inserted, and the Department of the Interior is perfectly willing that we should have that right.

Mr. RAKER. Mr. Finney, will you prepare an amendment in connection with Mr. Kingsbury's so that you can present it to the committee?

Mr. FINNEY. I have talked with him, and we have not been willing to have selections in these sites ratified without reservation. The power bill provides for patenting them with a reservation. If anything further is needed is a question.

Mr. RAKER. Will you go over it with him so that you can agree on something?

Mr. FINNEY. We will try. It is pretty difficult to agree on something which will satisfy all suggestions as to the bill now pending.

Mr. RAKER. But put some proviso in this bill so that there can be no question that the State will not lose its rights under this 70,000 acres which have been selected, and which we are asking to have protected.

The CHAIRMAN. Did the power bill have practically the same provision?

Mr. FINNEY. There is a provision here, subject to forest reservations. That would not cover the entire situation because we have withdrawn other lands under this act of 1910. Oil fields have been withdrawn and a number of selections on the surface of oil fields. We do not want them to be patented under State selection without reservation of the minerals. Possibly the act of July 17, 1914, might cover that phase of it.

Mr. RAKER. What I want is that you and Mr. Kingsbury go over the matter and submit an amendment that will provide this matter and protect the State selections of California.

Mr. FINNEY. I am not willing to ratify the selections at the expense of water-power sites and minerals.

Mr. RAKER. But put in a provision protecting such interests of the State that ought to be protected. Whether or not that is your view, I want to get it so that we can submit it to the committee.

The CHAIRMAN. And let Mr. Kingsbury and Mr. Finney submit a couple of statements with reference to their views on it. If it seems unwise to you give your reason and let Mr. Kingsbury submit his reason.

Mr. SINNOTT. I would like to ask Mr. Finney a question. I want to get this record clear. I want to send it out to the governor for specific reply from him. Gov. Withycombe's letter of March 21, 1916, which Mr. Hawley sent to the committee, was accompanied by a letter of the clerk of the State Land Board of Oregon, Mr. Brown, dated March 21, 1916, and on the first page of Mr. Brown's letter is the following statement referring to section 3:

> This would prevent the State from hereafter securing indemnity lands for school sections lost to the State by reason of fractional townships, mineral lands, or school sections homestead before survey.

Now, I understand you, Mr. Finney, to say that that is incorrect.

Mr. FINNEY. Yes; section 3 does not relate to losses by reason of homestead settlements, or because the lands are mineral in character or because the townships are fractional. It relates to school lands in forest reservations.

Mr. SINNOTT. The letter states that no further exchanges shall be made except as provided in section 2.

Mr. FINNEY. He is talking about section 3, I think.

Mr. LENROOT. I see he is.

Mr. SINNOTT. But the bill itself is not subject to objection raised by the clerk of the State board.

Mr. FINNEY. It is not subject to that objection, as I understand it.

Mr. SINNOTT. Then he goes on to say, "and prevent the State from making selection of any indemnity lands except those included in national forests."

Mr. FINNEY. He is correct as to that proposition so far as it relates to lands within national forests. If the State in the future tries to give up some lands in the national forests because they are in there, they would, under this bill, be confined in making their selections in lieu, to lands also within the limits of the national forests, and to that extent it is a limitation upon the right of selection, the right of exchange.

Mr. MAYS. You were going to suggest an amendment to that, were you not?

Mr. FINNEY. I am going to draw one up for consideration by the committee.

(Thereupon, at 4.15 p. m., the committee adjourned until Wednesday, April 5, at 10 o'clock a. m.)